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ACKNOWLEDGEMENT

This work is the outcome of Post-Doctoral Research under a Fellowship of the University Grants Commission, New Delhi to whom I am indebted for the handsome financial assistance that enabled completion of this work.

Thanks and gratitude are due to the Vice-Chancellor and the Registrar of the Jadavpur University, Calcutta, for all facilities given me for the purpose.

My warmest thanks are due to my teacher, Dr. S.K. Maity for his interest and constructive advice in the conduct of this enquiry.

My thanks are also due to my teachers, Prof. N.S. Bose and Prof. Amitabha Mukherjee for their encouragement and support.

I am grateful to the staff of the Jadavpur University Library, National Library and the Asiatic Society Library for their unfailing help and courtesy.

I thank Shri A.P. Ghosh for typing the manuscript and Messrs Abhinav Publications for their interest in this book.

SUKLA DAS

Calcutta
Vijayā Daśamī
14.10.75

353205

ABBREVIATIONS

Abhi.	Abhidhānaratnamālā
A.B.O.R.I.	Annals of Bhandarkar Oriental Research Institute.
Agni.	Agni Purāṇa.
A.L.S.	Adyar Library Series.
Amar.	Amarakoṣa.
Āpas.	Āpastamba Dharma Sūtra.
A.S.	Artha Śāstra of Kauṭilya.
A.S S.	Ānandāśrama Sanskrit Series.
Atri.	Atri Smṛti.
A.V.	Atharva Veda.
Baud.	Baudhāyana Dharma Sūtra.
B. Purāṇa	Brahmavaivarta Purāṇa.
Beal	Si-Yu-Ki. 2 Vols.
B.I.	Bibliotheca Indica.
B.J.	Bṛhajjātakam.
Bṛhad. Up.	Bṛhadāraṇyaka Upaniṣad.
Bṛhas.	Bṛhaspati Smṛti.
Bṛhat.	Bṛhatsaṁhitā.
B.S.S.	Bombay Sanskrit Series.
Chān. Up.	Chāndogya Upaniṣad.
C.I.I.	Corpus Inscriptionum Indicarum.
C.S.S.	Chowkhāmbā Sanskrit Series.
D.C. Ryder	Daśakumāracarita, translated by A.W. Ryder.
Devala.	Devala Smṛti.
E.I.	Epigraphia Indica.
Ency. Rel. Eth.	Encyclopaedia of Religion and Ethics.
Ency. Soc. Sc.	Encyclopaedia of Social Sciences.
Gaut.	Gautama Dharma Sūtra.
G.O.S.	Gaekwad Oriental Series, Baroda.
H.C.	Harṣacarita, translated by E.B. Cowell

	and F.W. Thomas.
H.D.S.	History of Dharmaśāstra.
I.A.	Indian Antiquary.
J.A.H.R.S.	Journal of the Andhra Research Society.
J.A.S.B.	Journal of the Asiatic Society of Bengal.
J.B.O.R.S.	Journal of the Bihar and Orissa Research Society.
J.B.R.A.S.	Journal of the Bombay Branch of Royal Asiatic Society.
J.O.I.	Journal of the Oriental Institute.
J.R.A.S.B.	Journal of the Royal Asiatic Society Bengal.
Kād. Kale	Kādaṁbarī, translated by M R. Kale.
Kām.	Kāmandaka Nītisāra.
Karpūra.	Karpūramañjarī.
Kāsh. S.S.	Kāshmir Sanskrit Series.
Kāt.	Kātyāyana on Vyavahāra, P.V. Kane.
Kaṭhaka Saṁ.	Kaṭhaka Saṁhitā.
K.S.S.	Kathāsaritasāgara.
Kuṭ.	Kuṭṭanīmatam.
Legge	Records of Buddhist Kingdom by Fa-hien, translated by J. Legge.
Life	Life of Hiuen-tsang by Shaman Hwui Li, translated by S. Beal.
Mahā.	Mahābhārata.
Mālav.	Mālavikāgnimitra.
Manu.	Manu Smṛti.
Mār. Purāṇa	Mārkaṇḍeya Purāṇa.
M.A.S.B.	Memoirs of Asiatic Society, Bengal.
M.A S.I.	Memoirs of Archaeological Survey of India.
Matsya.	Matsya Purāṇa.
Medh.	Medhātithi.
Mīm. S.	Mīmāṁsā Sūtra.
Mit.	Mitākṣarā.
Mṛccha.	Mṛcchakaṭikam.
M.S.	Mysore Series.
Mudrā.	Mudrārākṣasam.
Nāg.	Nāgānanda.

Nār.	Nārada Smṛti.
N.P.	Nīlamata Purāṇa.
N.SP.	Nirṇaya Sāgara Press.
Parā.	Parāśara Smṛti.
P.M.	Parāśaramādhava.
Raghu.	Raghuvaṁśam.
Rām.	Rāmāyaṇa.
R.C. Hazra	Studies in the Puranic Records on the Hindu Rites and Customs.
R.T.	Rājataraṅgiṇī.
R.V.	Rg Veda.
Sachau	Alberuni's India, translated by E.C. Sachau. 2 Vols.
S.B.E.	Sacred Book of the East.
S.B.H.	Sacred Book of the Hindus.
Śak.	Abhijñānam Śakuntalam.
Śata.	Śatapatha Brāhmaṇa.
S.I.I.	South Indian Inscriptions.
Sm. Can.	Smṛti Candrikā.
Śukra.	Śukra Nītisāra
Tai. Saṁ.	Taittirīya Saṁhitā.
Takakusu	A Record of the Buddhist Religion as practised in India and Malay Archipelago by I-tsing, translated by J.A. Takakusu.
Tantra.	Tantravārttika.
Vaś.	Vaśiṣṭha Dharma Sūtra.
V.C.	Vivāda Cintāmaṇi.
Vikram.	Vikramorvaśīyam.
Viram.	Viramitrodaya.
Viṣ.	Viṣṇu Smṛti.
V.P.	Vyavahāra Prakāśa.
V.N.	Vyavahāra Nirṇaya.
V.R.	Vivāda Ratnākara.
V. Māt.	Vyavahāra Mātṛkā.
Vya. Mayūkha	Vyavahāra Mayūkha.
Watters	On Yuan Chwang's Travels in India by T. Watters. 2 Vols.
Yāj.	Yājñavalkya Smṛti.
Yama.	Yama Smṛti.
Y.C.	Yaśastilaka Campū.

SYSTEM OF TRANSLITERATION

अ—a	ड़—ḍ
आ—ā	ढ़—ḍh
इ—i	ण्—ṇ
ई—ī	त्—t
उ—u	थ्—th
ऊ—ū	द्—d
ऋ—ṛ	ध्—dh
ए—e	न्—n
ऐ—ai	प्—p
ओ—o	फ्—ph
औ—au	ब्—b
क्—k	भ्—bh
ख्—kh	म्—m
ग्—g	य्—y
घ्—gh	र्—r
ङ्—ṅ	ल्—l
च्—c	व्—v
छ्—chh	श्—ś
ज्—j	ष्—ṣ
झ्—jh	स्—s
ञ्—ñ	ह्—h
ट्—ṭ	ं—ṁ
ठ्—ṭh	ः—ḥ

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1

INTRODUCTION

CHOICE OF THIS SUBJECT "CRIME AND PUNISHment in Ancient India from 550 A.D. to 1100 A.D." is a humble attempt towards a comprehensive study of that aspect of contemporary society. Numerous scholars have already contributed to the revelation of criminal activities in ancient India. Thanks to the progress of indological investigations that this particular period is also included in many of the valuable works. Therefore, no special originality on the subject is claimed nor any attempt at criticism made. However, there is no denying that the subject has not yet been duly reviewed in its entirety, though the voluminous work of P.V. Kane *History of Dharmaśāstra* gives a fairly detailed information about various crimes, punishments, judicial administration, evolution of ancient Indian law and allied topics. Valuable as the material is, it is to be noted that it forms but a small part of his voluminous work and is not an exclusive treatise. R.P. Dasgupta in his work *Crime and Punishment in Ancient India* had made an attempt in this direction but his work was mainly based on the *Smṛti* literature. The vast range of secular literature and other sources remain untapped. Thus the picture presented by him was incomplete though faithful. An attempt has been made here to press into service not only the technical literature or *Smṛti* works which no doubt constituted the main source material but also secular literature and archaeological sources.

The period 300 A.D. to 1100 A.D. is undoubtedly a vast one. It saw many ups and downs and vicissitudes of history.

It witnessed the rise of the Gupta empire which reached its zenith at one time as also its disintegration and final collapse. Though it is not possible to ascertain precisely the actual date of rise and fall of any empire, 550 A.D. has generally been accepted by indologists as the death knell of the vast Gupta empire which once envisaged the culmination of material progress in ancient India. The Guptas opened a new chapter in history. A succession of brilliant rulers contributed to the unification of almost the whole of northern India and a large part of Deccan under the banner of the Gupta rule. But its decline saw a large number of independent and semi-independent rulers contending for power and supremacy till the beginning of the seventh century A.D. when Harṣavardhana of the Puṣyabhūti dynasty annexed a sizeable part of northern India to his domain. The attempt of Harṣa to build up an empire, however, for the time being made Sthānīśvara the centre of interest but as northern India failed to produce another succession of rulers of exceptional ability and as Harṣa died without an heir, it is only natural that after him the edifice of his empire also fell to pieces and the Puṣyabhūti family came to an early end.

Post-Harṣa period witnessed kaleidoscopic changes. The independent and quasi-independent states made their headway. The Arabs invaded India and were repulsed from the mainland in the beginning of the eighth century A.D. The Arab conquest of Sind was as it has been said, "a mere episode in the history of India which affected only a fringe of the vast country". The Hindus who had been forcibly converted to Islam went back to their ancestral fold.

In the eastern part of the country the Pālas became powerful and the dynasty reached its peak under Dharmapāla (770-810 A.D.). After the Pāla, the Sena dynasty played a significant role in that part of India. In the west the Gurjara-Pratīhāras became prominent and the reigns of the Pratīhāra rulers Mihira Bhoja (836-885 A.D.) and Mahendrapāla (885-908 A.D.) were the landmarks of contemporary history. The empire established by their genius, however, received rude shock from the Rāṣṭrakūṭas. South India became the arena of complicated politics.

The collapse of the Gurjara-Pratīhāra empire ushered in the age of feudal disintegration in northern India. Thus the Chāndellas of Jejakabhukti, the Paramaras of Malwa, the Kalachuris of Chedi, the Guhilas and Chāhamānas asserted independence and indulged in internecine rivalries.

With the beginning of the eleventh century dawned a new era. Invasions of Mahmud of Ghazni from c. 1000 A.D. brought India in direct contact with Islam. The country had experienced many foreign invasions prior to Islam invasion but those invaders like the Greeks, Parthians, the Kuṣāṇas, and the Hūṇas had gradually been absorbed by the Indian culture while this was the first occasion when the invaders' main war cry was religion. Islam in India was introduced by the Arab conquerers of Sind three centuries earlier but in the eleventh century A.D., it reappeared as an aggressive force in politics and religion.

All these changes had their inevitable repercussions on contemporary society. For instance, stability of the Gupta empire led to better law and order and lower incidence of crime as compared to the Harṣa regime. Fa-hien and Hiuen-tsang's accounts enlighten us in this respect. Again Kalhaṇa records that during the reign of king Yaśaskara who was a very powerful monarch of Kashmir valley, the land was absolutely free from robbery.[1] While speaking of Harirāja (1028 A.D.) the chronicler Kalhaṇa adds, "he whose orders were never infringed cleared the land of thieves and prohibited the closing of doors in the market street at night".[2]

Change of attitude was also noticeable in society. Contact with Islam led to a tendency towards greater rigidity of caste system and religious and customary taboos and appreciably modified crime-punishment forms and relation. To quote A.L. Basham, "the caste system for all its defects gave a degree of security in an insecure world".[3] The caste rules gradually became very rigid. Al-beruni noted that areas within which a Brāhmaṇa could live were fixed and great attention was paid to see that a Hindu did not enter the country of the Turks.[4] He further remarked that the ancestors of the Hindus were not so narrow minded as those of his time.[5]

On the other hand, there arose some unusual flexibilities

based on necessity. During the first half of the eighth century a large number of men and women were taken as captives by the Muslim rulers of Sind. This undoubtedly created a great stir in Hindu Society but due to the flexibility of the Hindu law reconversion from Islam was initially permitted.[6] Pioneer in this field was Devala, the famous *Smṛti* writer of the ninth century A.D. who intended to purify those converted to Islam.[7] His was a bold step indeed.

Though orthodoxy in general was against rehabilitation of abducted women, political circumstances made the law givers more pragmatic. With a broad-mindedness a number of *Smṛtis* and *Purāṇas* declared that unfortunate women who were made prisoners or assaulted criminally should be treated with sympathy and liberalism.

The *Matsya Purāṇa* suggested that it would be absurd to condemn a woman if she was ravished or overpowered, in such case the assailant alone was guilty.[8] The *Agni Purāṇa* also asserted that a woman was not polluted by forcible assault and conception in such case was to be considered as an accidental circumstance and the victim would be readmitted to her previous position after the birth of her child.[9] Atri also holds that unavoidable misfortune ought not to ruin the whole life of a woman.[10] Parāśara advocated such sympathetic considerations and recommended that a woman should be abandoned only if she was a confirmed sinner and not otherwise[11] and prescribed an ordinary penance for readmission to her previous position.[12] In order to preserve the integrity of the Hindu Society, these enlightened views were accepted till the end of the ninth century A.D.[13]

But a marked change occurred from the eleventh century A.D. when the society became more and more rigid and hope of readmission to Hindu Society after unfortunate events became dim. It has been said that "new notions of purity were mainly responsible for the refusal of society to admit them back".[14]

Thus, the changing political background affords us ample scope to appreciate the subject under study in proper perspective.

While dealing with this subject we are fortunate to have

a few valuable but scattered materials consisting of inscriptions, coins, literature and foreign accounts.

A number of inscriptions bearing their dates are indispensable for this study. The inscriptions can be utilised safely not only because their dates are easily fixed unlike other source materials but they are also free from the limitations caused by different readings, corruption, modification, addition and alteration. Inscriptions furnish informations of considerable significance like the nature of different crimes, modes of punishment, name and designation of different officials of judicial administration and the like. Some fake documents so far discovered also help to understand contemporary mental attitude.

The numismatic sources are of no less significance. A careful study shows that manufacture of counterfeit coins was prevalent though it was considered a heinous offence in the eyes of law.

It is generally assumed that the literature of a period is the mirror of contemporary life and society and for this reason materials have also been derived from the literature of the period under survey. Though their respective dates are controversial, efforts have yet been made to assess them rationally before utilisation. Literature of this period may be divided under four heads viz. secular, legal, religious and technical.

So far as secular literature is concerned, the Gupta period produced the most brilliant luminaries like Kālidāsa, Viśākhadatta and Śūdraka. The works of Kālidāsa give a vivid picture of his contemporary age and help us to understand the behaviour of people and their various drawbacks. Equally interesting are the *Mṛcchakaṭika* of Śūdraka and the *Mudrārākṣasa* of Viśākhadatta. In fact the ninth act of the *Mṛcchakaṭika* is unique in depicting the court scene in all its details.

During the reign of Harṣavardhana flourished Bāṇabhaṭṭa, the author of the famous works the *Harṣacarita* and *Kādaṁbarī*. The *Harṣacarita* may be regarded as one of the very few attempts at historical writing in ancient India. Though some of his descriptions are grossly exaggerated and the work is actually a historical romance, with Harṣa as its hero, it gives a deep insight into the customs and manners prevalent in India of his times. The social beliefs and concepts can clearly be

glimpsed through it. G.B. Cowell has thus remarked, "but besides these veiled historical allusions the work has another interest from the vivid picture which it offers of the condition of Indian Society and the manners and customs of the period. Bāṇa is not a mere rhetorician, his descriptions of court and village life abound with masterly touches which hold up the mirror to the time...and his narrative illustrates and supplements the Chinese traveller's journey at every town."[15]

Moreover, the three works attributed to the scholar-King Harṣavardhana entitled the *Priyadarśikā*, *Ratṇāvalī* and the *Nāgānanda* help us in this field. Though set in royal environment they help to understand contemporary state of society.

Mention should also be made of the *Daśakumāracarita*, a prose romance of the seventh century A.D. The importance of it lies in the fact that it deals with day to day life of the contemporary society. A.L. Basham justly remarks, "few works of Indian literature tell us so much about low life".[16] Daṇḍin is much more unconventional in his depiction. Gambling, burglary, cunning, fraud, violence, murder, impersonation, abduction and illicit love form, jointly and severally, the predominating incidents in every story.

Like the *Daśakumāracarita* of the seventh century, the *Kathāsaritsāgara* of Somadeva of the eleventh century A.D. also supplements our knowledge. Innumerable tales told in utter simplicity offer good scope to understand contemporary social pattern, crimes, modes of punishment and system of judgment. In the Kashmir version of the *Bṛhatkathā* of Gunāḍhya there are numerous stories of faithful and adulterous women, of fools, rogues, thieves, gamblers, false ascetics and other fake people of society.

The *Yaśastilaka* of Somadeva Sūri is also of great importance as it throws considerable light on darker aspects of social life. Somadeva Sūri (959 A.D.) belonged to an order of Jaina monks and was a contemporary of the Rāṣṭrakūṭa King Kṛṣṇadeva III. He was also a political thinker and in *Nītivākyāmṛta* his political concepts and views are discernible.

The *Rājataraṅgiṇī* of Kalhaṇa, a product of the twelfth century A.D. has ample references to crime and punishment. Though it is a local chronicle, it gives an insight into the social

degeneration in Northern India. It also states that theft or burglary was rare when the ruling monarch was powerful. Kalhaṇa in the *Rājataraṅgiṇī* justly remarks that the destruction of one wicked person is lawful when all are benefited by it. Even Jina (the Buddha) slew a great snake who killed living beings.[18]

An earlier work the *Kuṭṭanimata* of Dāmodaragupta who flourished during the time of King Jayāpīḍa of Kashmir (779-813 A.D.) is a well-known work on pornography. It depicts with skill and proficiency the ugly side of life.

Kṣemendra a versatile author of the second half of the eleventh century was concerned mainly with humour and satire. In the *Samayamāṭṛkā* he refers to whores, thieves, female magicians and the like. The *Deśopadeśa* and *Narmamālā* are directed against hypocrisy, corruption, oppression which prevailed in Kashmir during his time. Realistic treatment of subject matters added to the value of his writings. His aim was to warn people from various fraudulent activities practised in society and satire was his medium. It has been rightly observed that "he looks at society not merely with the cynic's eye pointing out the malpractices but also sets forth suggestions for making the society healthier and a happier place to live in."[19]

The *Mugdhopadeśa* or advice to the naive of Jalhaṇa written in the first half of the twelfth century is didactic. Here the author makes references to fraud merchants, thieves, harlots and gamblers.

Main sources of information regarding the topic under review are the *Smṛti* literature. P.V. Kane has divided the *Dharmaśāstras* into three periods. The first period was the period of *Dharmasūtras* and of the famous *Manu Samhitā*. Next period is the most productive one as most of the important *Smṛtis* were composed from the first centuries of the christian era to about 800-900 A.D. In this group fall the works of Yājñavalkya, Viṣṇu, Nārada, Bṛhaspati, Kātyāyaṇa, Devala, Atri, Parāśara and Yama, to mention a few. They represent the last stage of legal development. They are the last of the original law givers of ancient India.

The third period is the period of Commentaries and

Digests. This covers roughly from about seventh century A.D. to nineteenth century. These works mainly seek to explain the recommendations of different law givers and to reconcile the divergence of opinions by offering interpretations. In fact, this was the period when the concept of infallibility of the *Smṛtis* began to develop. Whenever there was a difference of opinion in two *Smṛtis*, the Commentators had a tendency to justify both by interpretations and in this way consciously or unconsciously they made suitable changes in the body of law. Mention must be made of some Commentators of exceptional merit. Medhātithi was one of them. He was the famous Commentator of *Manu Samhitā* and flourished in c. 900 A.D. Vijñāneśvara was the author of *Mitākṣarā*, a commentary on the *Yājñavalkya Smṛti*. He flourished roughly about 1070 to 1100 A.D. The *Mitākṣarā* represents the essence of *Dharmaśāstra* speculation that preceded it for about two thousand years and it became the fountain-head from which flowed fresh streams of exegesis and developments.

Law Digests, however, were not concentrated on one particular *Smṛti* but these were the works that contained "a synthesis of all the dicta of *Smṛti* writers on topics of dharma".[20] Examples of this class of works are the *Kalpataru* of Lakṣmīdhara (1100-1150 A.D.), *Smṛti Candrikā* of Devanabhaṭṭa (1200-1225 A.D.), *Caturvargacintāmaṇi* of Hemadri (1260-1270 A.D.), *Rājanītiratnākara*, and *Vivādaratnākara* of Caṇḍeśvara (1290 A.D.) and others. According to P.V. Kane, these Digests attempted "to introduce order out of a chaotic mass of *Smṛti* dicta and explaining away apparent contradiction".[21]

The fixation of dates of different legal writers is a difficult task because unanimous opinions of scholars are not easily obtained. Yet the chronological table given by P.V. Kane in the *History of Dharmaśāstra* has been strictly followed because this work is more critical and precise than other works.

The wide range of religious literature dealing with rites and ceremonies of the ancient Hindus has also been utilised for this survey. It has been aptly remarked that "the Purāṇas are now accepted as one of the important sources of Indian History".[22] R.C. Hazra in his work *Studies in the Puranic*

Records on the Hindu Rites and Customs has even attempted to fix the dates of different chapters of the Purāṇas.[23] The chronology of the Puranic orders prepared by R.C. Hazra has been followed in this connection. Mention must also be made of the *Nīlamata Purāṇa*, a hand book of rites and ceremonies of ancient Kashmir. Kalhaṇa informs us that he gathered sufficient knowledge of early Kashmir from the *Nīlamata Purāṇa*. According to G. Bühler it cannot be older than the sixth or seventh century A.D.[24]

Equally important are the Jaina canons as they throw light on various aspects of life. The commentarial literature on the Jaina canons consists of four parts viz. *Nijukti*, *Bhāsa*, *Cunni*, and *Tīkā*. They supplement our knowledge derived from other sources.

As for technical literature, mention must be made of astrological and astronomical works like the *Bṛhatsaṁhitā* and *Bṛhajjātakam* of Varāhamihira, the famous study of lexicons like the *Amarakoṣa* of Amarasiṁha, works on erotics like the *Kāmaśāstra* of Vātsyāyaṇa, works on polity like the *Kāmandakīya Nītisāra*, the *Śukranīti* and others. Although the *Arthaśāstra* of Kauṭilya was an earlier work, it helped to understand gradual developments during the period under consideration. In fact, the *Nītisāra* of Kāmandaka which was a product of the Gupta age accepted Kauṭilya's work as its model.

Foreign accounts left by travellers who had visited India during the period under review have also been utilised because they contain valuable information regarding Indian way of living.

The Chinese pilgrim Fa-hien who visited India during the reign of Candragupta II has left an interesting record. Though all of his informations are not accurate or trustworthy yet some of them enlighten us and roughly portray a period of peace and prosperity. Fa-hien stayed in India for more than ten years (400-411 A.D.). He never refers to lawlessness and according to him punishment of criminals was mild.

The account left by the Chinese pilgrim Hiuen-tsang who visited India during 629-645 A.D. is of utmost significance. As a Buddhist monk of deep intelligence he wanted to visit India the land of the Buddha. Perhaps he was not satisfied with the

Chinese translations of the Buddhist texts and hence for copying the original manuscripts and acquiring knowledge direct from the Indian scholars, he left China for a visit to India. He followed the Central Asian land route to reach the land of Religion. He visited almost all the important places, Kashmir in the North, Saurāṣṭra and Valabhī in the West, Kāmarūpa in the East and Malokoṭṭa in the South. During his travel he stayed in different monasteries for studying sacred texts and came in contact with well known scholars of the period. His association with Emperor Harṣavardhana and King Bhāskaravarmaṇa of Kāmarūpa adds special value to his account. What he saw and heard in the course of his travel in India are recorded in the *Si-yu-ki.* Though Hiuen-tsang was a foreigner unacquainted with Indian customs and manners and paid a visit for religious purpose only, his vivid account throws considerable light on the day to day life of the then Indians Hiuen-tsang's elaborate description gives an insight into contemporary crimes, methods of punishment and various ordeals practised in society. A sharp deterioration in the administrative set up can easily be detected from the fact that roads and jungles were infested with robbers. Hiuen-tsang himself was attacked by robbers on more than one occasion. It is, however, significant to note that Fa-hien in the Gupta age was never molested by such people. It should be noted that some of Hiuen-tsang's observations were recorded in a generalised manner and some statements were contradictory yet his account is valuable. Unlike Fa-hien he was more critical, his information more accurate and his writings more lucid and therefore of immense significance. The account of Hiuen-tsang is supplemented by his Biography (*Life*) written by the pilgrim's friend Hwui-Li.

I-tsing, a junior contemporary of Hiuen-tsang visited India from 673 to 695 A.D. He came by sea and landed at the port of Tāmralipti and stayed at the Nalanda University for ten years to study Buddhist scriptures. His *Record of the Buddhist Religion as practised in India and Malay Archipelago* gives scattered information about the topic of our study. Though he was mainly concerned with the monastic life he was aware of the moral laxity of monks and different grades of penalties prescribed for different offences.

No less enlightening was the account left by a Muslim traveller named Suleiman who visited India in 851 A.D. He paid glowing tributes to the Pratīhāra King Mihira Bhoja in his record.

Chach-nāmā, translated from Arabic by Muhammad Ali Hamid bin Abu Bakr Kufi was an account about the Arab conquest of Sind.

Another Muslim traveller, Al-beruni was a contemporary of Sultan Mahmud of Ghazni. His travelogue the *Kitab-ul-Hind* is of special significance from social vie vpoint. Some of his observations were first hand while others were derived from hearsay and books. Al-beruni took great pains in learning Sanskrit and understanding the Hindus. It has been remarked that "he does not conceal whatever he considers wrong and unpractical with them but he duly appreciates their mental achievements, takes the greatest pains to appropriate them to himself, even such as could not be of any use to him or his readers."[25] Instead of blindly accepting legends and traditions he made a critical approach. Judging Al-beruni in relation to his predecessors it can safely be concluded that his work formed a most marked progress.

The *History of India as told by its own Historians*, edited by H.M. Elliot and J. Dowson are of great help as these volumes have recorded the accounts left by different travellers and historians. We are concerned mainly with the first volume of this voluminous work.

Equipped with these scattered materials an attempt has been made to piece together the information available from them and project a composite picture of crime and punishment in ancient India. While proceeding with this investigation some earlier and later sources had to be consulted to trace the continuity and development of different aspects. The works of numerous modern scholars and indologists have also helped in this respect; these are referred to in the bibliography. Occasional assumption and surmise to reach conclusion is, however, only due to scarcity and diversity of source materials and could better be avoided if at all possible.

It should, however, be candidly admitted that geographically the study is chiefly confined to northern India while the

main emphasis is on a specified time period of history—from the emergence of the Guptas in the arena of Indian politics to 1100 A.D. when the advent of mediaeval forces was well in horizon.

Footnotes

1. *R.T.*, VI. 7.
2. Ibid., VII. 29.
3. Brij Narayan Sharma, *Social Life in Northern India from 600 to 1000 A.D.*, Delhi, 1966, vide foreword.
4. E.C. Sachau, *Alberuni's India*, Vol. II, London 1910, p. 135.
5. Ibid., I pp. 22-23.
6. H.M. Elliot and J. Dowson, *History of India as told by its own Historians*, I, London 1866, p. 126.
7. *Devala.*, I.V. 17.
8. *Matsya.*, 227, 126.
9. *Agni.*, 165, 6-7.
10. *Atri.*, V. 35.
11. *Parā.*, X. 35.
12. Ibid., X. 26-27.
13. A S. Altekar, *The Position of Women in Hindu Civilisation*, Banaras 1956, p. 309.
14. *Ency. Rel. Eth.*, VI. 1, p. 625.
15. *H.C.C.T.*, introduction.
16. A.L. Basham, *The Wonder that was India*, London 1954, p. 442.
17. S.K. De and S.N. Dasgupta, *A History of Sanskrit Literature* (*Classical period*), Calcutta, 1947, p. 213.
18. *R.T.*, VIII. 2234.
19. S.C. Banerji, *Cultural Heritage of Kashmir*, Calcutta, 1965, pp. 73-74.
20. P.V. Kane, *History of Dharmaśāstra* I, Poona 1941, p. 246.
21. Ibid., p. 246.
22. A. D. Pusalkar, *Presidential Address of Proceedings and Transactions of All India Oriental Conference* XVIII Session Dec. 1955, Part 1, p. 61.
23. R.C. Hazra, Dacca, 1936, pp. 182-83.
24. *J.B.R.A.S.*, extra number 1877, p. 177.
25. Sachau, I, p. xvii.

2

CRIME

IN A BROAD SENSE, CRIME CAN BE DEFINED AS the violation of rules and regulations which are enforced by the State and the Society. Members of every society are expected to act in accordance with its established norms and law. Maladjustment of an individual generally leads to breach of that norm. It should, however, be noted that crime is a relative term and what is regarded as crime by a particular society may not be so to another. Felix M. Keesing has rightly observed that "... behaviour range through "should" or "ought" categories to the "must categories" that is conduct demanded by the society so that disobedience arouses widespread moral indignation, even horror and calls for severe punishment."[1] According to R.K. Choudhuri, crime "has its origin in the conflict of the self-seeking habits of the individual with the common customs of any social groups that ensure its survival in the struggle for existence."[2]

To discourage crime and to punish the criminals Indians from a very early time gave special powers to the ruler of the state or a particular ruling group. But it is impossible to check such tendencies absolutely and for various reasons, social, economic, political or psychological, people challenge the norm of the society.

From the Vedic period onwards we find ample references to such anti-social behaviours on the part of the members of Indian Society. It is believed that time was when society was free from such criminal tendencies. Even the *Rg Veda* visualis-

ed the degeneration of early religion and morals[3] and recorded the anti-social behaviour on the part of members of the society.[4] According to Manu there was an age when *dharma* prevailed in perfection but gradually *adharma* made its headway giving rise to the tendencies like theft, falsehood and fraud.[5] The same idea was repeated by the later writers like Nārada and Bṛhaspati. Nārada remarked "when mortals were bent on doing their duty alone and habitually veracious, there existed neither law suits, nor hatred nor selfishness. The practice of duty having died out among mankind law suits have been introduced and the king has been appointed to decide law suits because he has the authority to punish."[6] Bṛhaspati clarified it by stating that "in former ages men were strictly virtuous and devoid of mischievous propensities. Now that avarice and malice have taken possession of them, judicial proceedings have been established."[7] Kāmandaka pointed out the need for *daṇḍa* because he could understand the tendencies of human nature. So he commented "as the world tends to depart from its path of duty because of beings preying upon one another, there follows in the absence of *daṇḍa* the destructive condition indicated by the maxim of the larger fishes devouring the smaller. The world shelterless and being caused perforce to sink into hell by the passions of men is upheld by the king by means of *daṇḍa*. In this world which is swayed by the passion of worldly objects it is rare to come across the behaviour of good men, even the husband who is lean or maimed or diseased or poor is obeyed by the fear out of *daṇḍa*."[8] The law givers, therefore, prescribed regulations and despised the criminal tendencies.

Among the different forms of crime in vogue in Northern India during the period under review theft (*Steya*) was the commonest. A study of the Vedic literature reveals that from a very early period Indians were disturbed by the criminal activities of thieves and robbers. The *Ṛg Veda* made specific mention of thieves (*Tāyu* or *Stāyas*)[9] and robbers (*Taskaras*).[10] The harmful activities of the thieves and robbers are also reflected in the *Mahābhārata*.[11] From the works of early law givers it is clear that activities of these criminals affected the society in such a way that people considered them major evils of the

society and wanted to get rid of them.[12]

Megasthenes while speaking of the Maurya period recorded that theft in India was a rare occurrence.[13] But this is an exaggerated statement because the work of Kauṭilya refers to thieves and robbers as the pests of society and suggests various steps to seize these criminals.[14]

Frequent reference to theft can be gathered from contemporary works. Kātyāyaṇa defined theft as an act which deprived a man of his property clandestinely or openly either by day or by night.[15] Nārada defined theft as an act done by fraud[16] either openly or in a concealed manner.[17] Bṛhaspati holds the view that thieves are sub-divided into thousand folds according to their skill, ability and method of cheating.[18] He further states that fraudulent traders, quacks, cheats etc. are open thieves while housebreakers, robbers and stealers are secret thieves.[19] The gravity of the theft was decided in accordance with the value of the stolen article.[20] Thus, daily requisites like earthenware, seat, conch, wood, leather, grass, grain, prepared food etc. were articles of small value. Clothes made of materials other than silk, animals other than cows and metals other than gold, grain like rice and barley were termed as articles of medium value. Gold, precious stones, silk, women, men, cows, elephants, horses and articles owned by a deity, a *Brāhmaṇa* or a king were considered things of high value.[21] Punishment was also graded according to the value of the article.[22] Petty thieves who stole grass, wood, flower, things of daily use and of inferior quality[23] were naturally less professional and less evil and committed these crimes for economic reasons. Law givers, therefore, had made some provision that a traveller in scarcity and food shortage could take from another's land without being liable to punishment, two sugarcane stalks, two *Mūlakas*, two cucumbers or melons, five mangoes or pomegranates and a handful of dates and such corn as rice, wheat or gram.[24] Flowers and other requirements for worship could also be obtained from any place without the permission of the owner.[25]

Theft as a common crime is often mentioned in contemporary inscriptions. The Khoh copper plate grant of Mahārāja Hastin and Jayanātha dated 496-97 A.D. refers to two expres-

sions *Coravarjjam* and *Coradaṇḍavarjam* implying clearly a fine imposed on thieves.[26] The Betul plates of Samkṣobha dated 518-519 A.D. refer to thieves and mischief doers.[27] Inscriptions also make specific mention of ten offences[28] of which theft occupies the foremost position. In some inscriptions we find occasional references to thief catchers who were entrusted with the task of guarding their localities.[29]

In the contemporary literature also we find glimpses of this crime. In the *Daśakumāracarita* there is a reference to a servant stealing everything from his master's house.[30] In the works of Kālidāsa also references to theft can be gathered.[31] The *Bṛhajjātakam* of Varāhamihira makes occasional references to thieves.[32] The Jain canonical literature speak mainly of theft among various crimes. Thieves (*Āmosa*), robbers (*Lomahara*), pickpockets (*Granthibheya*) and burglars (*Takkara*) are specifically mentioned.[33]

The *Mṛcchakaṭika* and *Daśakumāracarita* throw interesting light on theft by house-breaking Thus, in the *Mṛcchakaṭika* we find Śarvilaka breaking open the outer wall to enter the garden. Before entering the house he had to think of a proper opening. According to him an opening could be made where the wall had settled because of the infiltration of water; where no noise could be heard and aperture would be in accordance with the rules of klepto'ogy, where masonry was old and had been corroded and where women could not see him. He, however, found a proper place where clay had been loosened by alternate exposure to the sun's heat and to water from caves, cracked open by saltpetre and had some rat holes.[34] The thief thus made a breach to infiltrate. This work further notes that in defence of his evil deeds the thief quoted scriptures. He even said, "people may despise our stratagems and call our heroism brigandage but our independence, however decried, is certainly preferable to menial labour and servitude". Moreover, he supported his act by saying that he followed the path of Aśvatthāmā who took advantage of sleep to slay his slumbering royal enemies.[35] From the soliloquy of Śarvilaka it can be assumed that there was a work on kleptology ascribed to various authors headed by Skanda (Kumāra or Kārtikeya). Others were Kanakaśakti, Bhāskarnandin and Yogācārya. He

repeatedly invoked their names as his masters.[36]

The work also informs us that for making breach in the wall four methods were followed by the house-breakers. If bricks were of terracotta they were to be removed, if they were of dried clay they were to be cut, if the wall was of piled up earth water was to be applied, and if there were wooden pilings they were to be sawn in two. Moreover, the aperture was to be shaped like a full blown lotus, the disk of the sun, the crescent moon, an eclipse, an elongated rectangle, a *Svastikā* or like a water jar. It further adds that a thief in a burglary expedition was properly equipped with measuring tape, special unguents, magic grain and a moth which would extinguish lamp.[37] This has been supplemented by Jain Canons.[37a]

Information about scientific burglary furnished by Śūdraka is further incremented by Daṇḍin. From him it is learnt that a standard book on house-breaking was in existence during his time and the book was attributed to Karṇisūta. He also makes mention of various implements required by a thief during his burglary expedition. Before the expedition of house-breaking a thief generally studied every house, assessed the wealth of different people and observed their characteristic features. He was to be clad in a black half trouser (*ardhoruka*) and provided with a sharp sword and other requisites of burglary like scoop (*phaṇi-mukha*), scissors (*kākali*), tongs (*saṁdamśaka*), a dummy (*puruṣa-śīraṣka*), magic powder (*yogacurṇa*), magic lamp (*yoga varttikā*), measuring tape (*māna sūtra*), hook (*karkaṭaka*), rope (*rajju*), a lantern (*dīpabhājana*) and a casket containing bees (*bhramara karaṇḍaka*) for extinguishing light.[38] From these descriptions it appears that thieves required special training and skill for carrying on scientific burglary. Daṇḍin also makes mention of experts in digging who would make tunnels to infiltrate.[39]

From the *Yaśastilaka Campu* it is evident that merchants' houses were the general targets for burglary and theft[40] as they were the wealthiest members of the community.

The *Caryāgītis* of Bengal which were mainly composed during the ninth to twelfth centuries A.D. refer to the frequent occurrence of theft for which doors had to be locked and guards were to be appointed for vigilance.[41] Kukkuripad

records in a song the sad lamentation of a lady whose ear ornament was stolen by a thief while she was fast asleep.[42]

The *Rājataraṅgiṇī* states that during the reign of king Meghavāhana theft was a frequent occurrence.[43] But when king Yaśoskara ruled Kashmir he freed the land from thieves and even at night shop-doors remained open in the markets and roads were also secure for travellers.[44] May be there is some poetical exaggeration in this statement but undoubtedly a strong ruler could prevent, if not completely eradicate the crimes.

Equally proficient in their art were the kidnappers. From Manu and Vyāsa we learn that kidnapping was prevalent from a very early time and both the law givers prescribed death sentence for kidnapping.[45] Nārada and Bṛhaspati also followed early law givers and prescribed severe punishment for kidnapping. It was a grave offence to kidnap a woman but more so if she was a maiden,[46] irrespective of her social status.[47] Unlike Nārada, Bṛhaspati, however, made no such distinction.[48] Not only adults but children were sometimes robbed away from the lap of their nurses by thieves out of greed for money.[49] It is quite likely that they were returned to their parents only after payment of a ransom.

Cut-purses were also serious menace to the society. Yajñavalkya makes mention of both cut-purses (*granthi-bhedaka*) who carried away things by loosening or cutting the knot and pickpockets (*utkṣepaka*).[50] We also come across the reference to cut-purses (*gaṇḍa-bhedaka*) in the work of Kālidāsa.[51] Contemporary law givers seem more lenient[52] from the earlier ones[53] while prescribing punishment for these criminals. This perhaps suggests that due to the frequent occurrences, this sort of crime was not considered very serious.

Highway robbery was also very frequent during the period of our survey. Kauṭilya made a distinction between robbery and theft. The former being sudden and direct seizure of a thing while the latter was a fraudulent and indirect seizure.[54] Nārada made mention of robbers who used to roam in the woods or lie concealed and attacked unprotected travellers.[55] Bṛhaspati also made special reference to robbers.[56] Contemporary law givers had no sympathy for them.[57] From

Kālidāsa we learn that robbery was uncommon in the Gupta period[58] and merchants travelled at ease over mountains, forests and rivers.[59] This is further corroborated by the account of contemporary Chinese pilgrim Fa-hien who noticed that roads were generally safe.[60] In the *Mālavikāgnimitram* of Kālidāsa, however, we find a reference to highway robbery. A large group of traders were going to Vidiśā from Vidarbha. While they encamped in a forest for rest they were attacked by a group of highway robbers. Then the caravan warriors had a short fight with the robbers but were repulsed by the latter.[61] Though perhaps an exceptional occurrence, yet this much can be said that people were not absolutely free from the danger and so the merchants travelled in caravans escorted by caravan soldiers even in the time of Kālidāsa. It appears that with the degeneration of the vast Gupta empire the highway robbery became a more frequent feature. Hiuen-tsang, who came to visit India during the first half of the seventh century A.D. was molested by robbers on more than one occasion. His biographer records that the Chinese pilgrim encountered a gang of 50 robbers in a great forest of *Palāśa* trees near the town of Śākala (modern Sialkot). The pilgrim and his followers were not only robbed of their clothes and belongings but were also pursued by the robbers with drawn swords. A *Brāhmaṇa* peasant who happened to appear on the scene with 80 armed followers succeeded in repulsing them and saving Hiuen-tsang and his companions.[62] D.C. Sircar pointed out that the armed followers referred to in the work were no other than forest guards mentioned in the *Jātaka* literature.[63]

In an inscription from the Bharatpur state we find reference to a Brāhmaṇa named Lokāditya who died fighting against a number of robbers.[64] The Jain canonical literature describe a number of robbers of notoriety who resided in the well protected robber settlements known as *Corapallī*.[65] *Kathāsaritsāgara* abounds in references to highway robbery.[66] Roads were unsafe and infested with wild animals and robbers. Merchants used to carry defensive weapons.[67] It seems merchants were the usual targets of robbers as they carried valuable goods with them. The accounts of Hiuen-tsang

inform that routes were infested with robbers awaiting to kill the travellers.[68] Daṇḍin in his *Daśakumāracarita* also refers to robbers who used to attack travellers on the rough road through the forest.[69] They even entered settlement, seized wealthy villagers, plundered their property and harassed peace-loving people.[70]

Under such circumstances, land routes were in no way safe for merchants carrying valuable commodities for sale. It was, therefore, customary to travel distant places in groups to avert dangers. Bṛhaspati pointed out that when danger was apprehended from robbers or thieves and irregular troops, it was to be considered as a distress common to all as in such cases a single individual could hardly repel the danger.[71] Daṇḍin thus relates that one Puspodbhava intending to visit Ujjayinī made friends with the captain of a merchant caravan and safely reached his destination with his vast treasure.[72] Al-beruni also noticed in later period that forest areas were infested with robbers.[73]

Waterways were no safer. Hiuen-tsang narrated that having left Ayodhyā he proceeded eastward following the course of Ganges and on board a vessel with eighty passengers. They were attacked by pirates who concealed themselves under the thick foliage of an *Aśoka* forest. Ten pirate boats attacked them and deprived them of their belongings. They were worshippers of *Durgā* and wanted to kill Hiuen-tsang and offer his flesh and blood to the goddess in order to procure fortune. Circumstances, however, changed their decision and they ultimately confessed their faults to Hiuen-tsang.[74]

Like Manu,[75] Nārada, Bṛhaspati and Kātyāyaṇa[76] made specific mention of open thieves who earned their livelihood by fraudulent activities. Thus they considered forgers, adulterers, fraudulent traders, counterfeiters of coins and the like as thieves who deprived a man of his share openly by deceit and falsehood. These acts were socially reprehensible and severe punishments were prescribed by law givers.

Forgery was a crime prevalent during the period under consideration. Seals and documents were often forged with skill. Authentic documents were of immense importance. When a mortgage, sale or gift was made by means of a

document and by means of witnesses, the transaction effected by a document was considered superior to oral agreement.[77] But clever forgers acquainted with place and time would make a writing similar to the original document. So they were to be examined with great care. Various rules and regulations were laid down by different law givers.[78] Yājñavalkya pointed out that a document which was transferred into another country, whose writing was not legible, which was destroyed or soiled with dirt, stolen, spoilt by fire, mutilated or which contained effaced syllables was considered as invalid.[79] Both Nārada and Bṛhaspati made it clear that documents caused to be written by forcible means and deception were to be reckoned as false.[80] A document executed by an intoxicated person, by a criminal, a woman, a child, a mad man, an idiot, a dying person, an enemy, a suffering man, one oppressed with fear or distressed with calamity had no validity.[81] Old documents with fresh appearance and vice versa were also to be suspected.[82] So in order to establish validity of a document it had to be read out occasionally to members of families, associations and other groups.[83] because a writing which had neither been seen nor read out for thirty years was considered invalid.[84] In doubtful cases authenticity had to be established by proper investigation.[85] According to Kātyāyaṇa, just as the reflection of a person in the mirror appeared real which it was not so also clever people had capacity to fabricate documents which had absolute resemblance with the genuine.[86]

Forgery of documents was severely condemned by early law givers like Manu and Viṣṇu.[87] Yājñavalkya prescribed highest fine for interpolation and alteration in a charter.[88]

An exquisite example of forgery of this period is the famous Madhuban copper plate of Harṣavardhana. It records that the village Somakuṇḍaka was held by a *Brāhmaṇa* named Vāmarathya on the strength of a forged charter. When this was ascertained on enquiry the charter was annulled and the village was taken away from that wicked Brāhmaṇa and was granted to a group of *Brāhmaṇas* by King Harṣavardhana.[89] According to some scholars spurious Kaira plates of Vijayarāja found in Kaira district of Northern Gujarat were also forged in favour of the

descendants of some *Brāhmaṇa* donees in the middle of the seventh century A.D.[90] The Nālandā and Gayā copper plate grants of Samudragupta according to some scholars are also spurious grants though any definite dates of fabrication of these grants have not been established.[91] The Tarachandi inscription (1169 or 1173 A.D.) records that an officer of the Gāhāḍavala King himself issued an unauthorised charter to some *Brāhmaṇas* after receiving some bribe from them but the government officer Japila made an investigation and pronounced the charter as forged.[92] It is noteworthy that most of the fabricated grants were on copper plates. It has been rightly suggested by Fleet that "the stone records of India mostly stand in very conspicuous places. Even spurious records on stone would have to be exhibited in the same way and except occasionally inside the precincts of temples, the establishment of which might include individuals qualified for each step in the manufacture of such records, both the preparation and the erection of them would entail a great amount of publicity and the connivance of many more persons including at least village officials, than those actually interested in successful accomplishment of the fraud. On the other hand fabrication of a copper charter which remains in obscurity in private hands until the time when it is actually wanted for production, is a hole and corner business, easily confined to one or two accomplices—one of whom, the artisan who does the engraving of what is traced on the plate by the writer, need not know anything about the purport of what he is doing."[93]

The *Rājataraṅgiṇī* refers to a case of forgery of a written document[94] for which King Yaśoskara (939-948 A.D.) pronounced severe punishment for the culprit.[95] The *Yaśastilaka Campu* makes specific mention of forgery.[96]

Indeed due to prevalence of forgery special stress was laid on the renewal of a document with care when it was damaged, stolen, lost or badly written.[97] The Nidhanpur copper plate grant of Bhāskaravarmaṇ specifically mentions that because of the burning of former (original) plates the newly written letters of that charter were of different form than that of the previous charter. So it should not be considered as a forged or fabricated charter.[98]

To prevent forgery, seals were often affixed to letters[99] and documents. They were tokens of authenticity of documents despatched along with them.[100] In the Nālandā sites many of the broken seals have been unearthed. It has been suggested that seals attached to them were broken after the receipt of documents to check forgery.[101] Breaking of the royal seal was considered a severe offence.[102] In the Nālandā University special seals were used for authenticity of documents and certificates (*Pramāṇa patras* or *Prcśamsā patras*) with which they were affixed.[103] These seals were of great importance in order to check frauds which as in modern times were quite prevalent in the field of education. "Those who stole the name of Nālandā Brother were all treated with respect wherever they went" states Hiuen-tsang.[104] Evidently many of the students must have been engaged in fraudulent activities by forging seals and documents.

Use of false balance and fabrication of weights and measures was another criminal tendency common specially among the trading class. From a very early time law givers paid special attention to this trait. Manu provided that weights and measures should be re-examined once in six months.[105] Kauṭilya referred to special superintendents in charge of balances, weights and measures.[106] The law givers of the period under review were also aware of this crime. Heavy punishment was prescribed for those who fabricated false balances, measures etc.[107] Nārada made special reference to rogues who forged measures and weights.[108] Bṛhaspati also mentioned fraudulent traders, cheats and forgers.[109] Kātyāyaṇa and the *Matsya Purāṇa* imposed fine upon traders who used false weights and measures.[110] *Mitākṣarā* while explaining a verse of Yājñavalkya added that a *Kutakṛt* was one who made scales, royal mandates, measures etc. different from the general standard of the country, whether less or more and also he, who used that knowing it to be false.[111] The charter of Viṣṇusena dated 592 A.D. refers to the cases involving weights and measures.[112] Uttarakulika was an expert on matters pertaining to weights and measures. So his view as an expert was necessary in the cases involving such matters.[113] The charter further adds that the weights and measures prevalent in

the locality were to be examined by state officials twice a year in the month of *Āṣāḍha* and *Pauṣa*.[114] Similarly Somadeva made specific reference to the crime of falsification of weights and measures.[115]

Manufacture of counterfeit coins was also a serious offence not uncommon. In Athens debasing coinage was held to be a very grave crime. The same idea was prevalent throughout the Roman empire[116] and in India. Kauṭilya prescribed severe monetary punishment for manufacture of counterfeit coins, for accepting it and passing it off to another.[117] Yājñavalkya stated that a man who declared good coin bad and vice-versa should be duly punished.[118] It suggests that often counterfeit coins were passed as genuines and once that crime was detected the criminal had no way out. From a charter of Viṣṇusena it is learnt that the practice of manufacture of counterfeit coins was quite prevalent among the trading class and schedule fine for this offence was six *Rūpakas* along with the religious cess of one fourth *Rūpaka*.[119]

Adulteration was also prevalent at that time and the crime was mainly committed by the trading class. These offenders were also treated as thieves.[120] Fraudulent nature of merchants was a known feature in ancient India. Bāṇa observed that a trader without knavery was hard to find.[121] The same idea is reflected in the works of Daṇḍin.[122] Hiuen-tsang noticed that traders were not only mean but also deceitful.[123] I-tsing, on the other hand, pointed out that trading was a faultless occupation as it did not injure life.[124] The pilgrim seems to have failed to notice the real implications. The author of the *Kathāsaritsāgara* states that merchant class like the courtesans are very covetous. They can do anything and everything for wealth.[125] In the *Rājataraṅgiṇī* occurs the story of a person who had deposited one lakh of *Dīnaras* with a merchant and had withdrawn some money from time to time. When the balance was demanded, the merchant furnished a statement of accounts giving a list of fictitious items of withdrawals for many years with interest and showing that very little of the deposit was left. The fraudulent nature of the merchant was, however, revealed and the king inflicted severe punishment.[126] Kṣemendra has compared the merchants with *Piśācas* and 'day thieves'.[127]

Dhanapāla, a Digambara Jain author depicted a merchant as a man of deceiving nature. He portrayed the nature of a merchant advising his son in this manner—"do not disclose your heart even to friends, be chary of words, acquire wealth in various ways even by deceiving people, extol your goods, do not expose your side but try to feel that of others and be deaf to other's projects but stick to your own".[128] These comments must have been made on first hand experience.

Most of the *Smṛti* texts were aware of the malpractice of adulteration. From the *Yājñavalkya Smṛti* it can be gathered that commodities of daily use like rice, salts, butter, molasses, perfumes and medicine were being adulterated.[129] Earth, hide, gem, yarn, iron, wood, bark or clothes of inferior quality were adulterated so as to make them appear as that of good quality. Vijñāneśvara throws interesting light on this aspect. According to him there was a practice of selling cat's skin as tiger skin by adding proper colour to it and a crystal bead was often passed as precious ruby. Moreover, a silken effect was created by giving glossy appearance to cotton thread and by adding the perfume of sandal a piece of *Bilva* wood was sold as sandal wood.[130] While commenting on Manu, Medhātithi warned that one should not practise adulteration by any means. He explained that it is unfair to mix two commodities for sale. One should neither mix saffron (*Kumkuma*) with safflower (*Kusumbha*) nor apparently fresh looking old clothes with brand new stock.[131] Most probably these tactics were practised by the merchants. Bṛhaspati noticed the practice of adulterating good articles with that of inferior quality and manufacture of false gold and gems.[132] These deceivers who manufactured imitation articles of small value and caused them to appear very valuable were punished severely.[133]

Like Manu, the *Matsya Purāṇa* observed that the goldsmith was the worst of all deceitful persons and if he was detected committing fraud his limbs should be cut off bit by bit.[134] Śūdraka also states that goldsmiths without deceit were rare to find.[135] Almost the whole eighth canto of Kṣemendra's *Kālavilāsa* is devoted to the wiles of goldsmiths. According to him there were sixty-four arts of misappropriating gold common

to goldsmiths while some other tricks were very subtle.[136]

Yājñavalkya stated that sale and purchase should be conducted daily according to the value fixed by the King.[137] It was even punishable to demand a higher price.[138] The *Agṇi Purāṇa* laid down that merchants dealing fraudulently with honest men either in respect of quality or the price of a commodity should be punished and their goods should be confiscated to the state.[139] Punishment was also reserved for those merchants who did not purchase the foreign articles at the price fixed by the King and those who bought them cheaply and sold at a higher price.[140]

Gambling and betting on animals (*Dyūta-Samāhvaya*) were also considered serious offences. Manu defined them very clearly when inanimate things were used for staking money on them that was regarded as gambling while the use of animate beings was known as betting.[141] He prohibited gambling because it destroyed truth, honesty and wealth.[142] He considered gambling as an open theft and the practice according to him required strong suppression.[143] Nārada also grouped gamblers in the category of open thieves.[144] Kātyāyaṇa severely condemned gambling because it inflamed human passion and greed, engendered bad characters, cruelty and caused loss of wealth.[145] The Śāstric injunctions could, however, do very little to check this practice and it continued even from the Vedic age.[146] The law givers, therefore, tried to apply some restriction. Bṛhaspati pointed out that if gambling or prize-fighting was allowed it should take place under the superintendence of Keepers of game houses because it served the purpose of detecting thieves.[147] Same was the opinion of Nārada.[148] According to Kātyāyāṇa gambling must be carried on openly with an arch constructed near the door so that men of respectable family might not be misguided.[149]

Though gambling was allowed under these circumstances dishonest gambling was strictly punished. Daṇḍin remarked in favour of gambling as it increased magnanimity, nourished impetuosity and sharpened intelligence[150] but at the same time he did not fail to record the amount of fraud exercised in gambling.[151] Gamblers used all sorts of tricks to win and it can be assumed that fair dealing in gambling was rare. In the

Mṛcchakaṭika we find reference to tricky and cheat gamblers.[152] There a gambler was depicted as running away without paying the ten pieces of gold that he lost and was chased by the Keeper of the gambling house.[153] It should be noted that gambling dens and houses of courtesans were the centres of all evil deeds as people from every walk of life assembled there. Yājñavalkya prescribed that when gambling was carried on secretly without taking royal permission or with false dice and other deceitful tricks, the gambler should be punished.[154] Nārada further added that a wreath of dices should be hung round the neck of of a wicked gambler using false dices.[155] Use of unauthorised dice was an offence.[156] In order to prevent dishonesty, dices were examined and gambling with authorised dices was allowed.[157] From the contemporary literature it can be gathered that gambling and prize-fighting were popular pastime among people.[158] The *Nīlamata Purāṇa* of Kashmir. instead of prohibiting, prescribed gambling on the *Dīpamālā* festival as the victory on that gambling ensured the profit throughout the year.[159]

Adultery (*Strīsaṁgrahaṇa*) was considered as one of the most heinous offences. Though the law givers laid special stress on the sacred relation between a husband and a wife[160] and praised the special virtues like chastity,[161] duty,[162] purity[163] in real life violation of these laws was not rare. Adultery or illicit connection between persons of both the sexes was regarded as a serious crime and law givers prescribed deterrent punishment for them. There is mention of this crime even in the Vedic literature.[164]

Early law givers like Manu, Gautama, Vaśiṣṭha, Viṣṇu and others observed adultery as a social vice and prescribed special punishments which would cause terror. Manu pointed out that in this world there was nothing detrimental to long life as sexual intercourse with another man's wife.[165] Adultery was responsible for mixture of *Varṇas* (castes) and ultimate destruction of everything.[166] Nārada in a more vivid manner stated that it was not possible to produce grain without proper field and seed. So also a legitimate offspring could be produced by a husband and wife only. Sexual connection with others would, therefore, mean adultery.[167] *Mitākṣarā on* Yājñavalkya

defined *Saṁgrahaṇa* as illicit sexual intercourse between men and women for enjoyment.[168] Nārada specifically pointed out that punishment be inflicted by the King on the culprit who had intercourse with a woman with whom it was forbidden to have any connection and those sinners should also be cleared of their moral offence by performing penance.[169] Kātyāyaṇa even prescribed that when a man had forcible intercourse with a woman capital punishment was to be inflicted on him as it was violation of proper conduct.[170]

Intercourse, however, was permitted with a wanton woman, who belonged to other than a *Brāhmaṇa* caste, a prostitute, a female slave or a female not restrained by her master.[171] While explaining a verse of Manu[172] Medhātithi made a clear distinction between 'protected' and 'unprotected' women. According to him an unprotected woman might be regarded as another man's wife for having married him according to prescribed nuptial rites, but in reality she ceased to be his wife due to her fall from the path of virtue. The evil reputation of these types of women is finely illustrated in the *Abhidhānaratṇamālā*.[173] Medhātithi records that these women though not exactly prostitutes allowed paramours into their houses with the permission of their husbands.[174]

Apart from these, intercourse with unwilling females belonging to other men was strictly prohibited.[175] Adultery was generally committed by force, deceit and sensual passion.[176] Nārada recorded illicit sexual connection both with unmarried and married women.[177] He severely condemned illicit connection with unwilling maidens[178] but surprisingly enough both Yājñavalkya and Nārada considered it no offence at all if a man approached a willing maiden or had any connection with her provided he had honoured her with ornamental gifts and legally married her.[179] It virtually amounts to premarital sex. From Daṇḍin we learn that attitude of the society was very stern only when an unwilling virgin was violated.[180]

Adultery with the married ladies was also quite common. The *Daśakumāracarita* makes frequent references to this type of adultery. Thus, Upahāravarman, a character of Daṇḍin's work while approaching Kalpasundarī realised that there would be loss of virtue if one had illegal connection with a married

lady.[181] But knowing fully well the sin he would incur, Upahāravarman committed the crime of adultery.[182] It is quite natural that the guiding motive here was sensual pleasure which could transgress all the barriers of Śāstric injunction. Daṇḍin frankly admitted that consequence of excessive adultery was harmful.[183]

In the Chammak copper plate inscription of Pravarasena II we find references to adulterers. That they were regarded as social pests is revealed by the fact that a village was granted to a group of *Brāhmaṇas* who would enjoy it for generations provided they bore moral character and not adulterers.[184] Another inscription of 992 A.D. makes mention of adulterer and adulteress and their respective punishments.[185] Adultery was perhaps more frequently punished during the later years of Hindu rule. Somadeva makes ample references to this vice. It appears that mostly men of wealth and status committed adultery.[186] So Somadeva tried to preach chastity and modesty. According to him a man should regard all women except one's wife or concubine as his mother, sister or daughter and worldly pleasures should be enjoyed in moderation like food to satisfy only physical needs.[187] But all seems to be in vain. In the *Rājataraṅgiṇī* there are several instances of this crime.[188] While commenting on *Manu Smṛti* which prescribed for a *Vaiśya* culprit approaching a protected *Kṣatriya* woman or a *Kṣatriya* approaching a *Vaiśya* woman fines of 500 and 1000 *paṇa*s respectively,[189] Medhātithi added that heavier punishment for the *Kṣatriya* was justified on the ground that being entrusted with the duty of protection if a *Kṣatriya* behaved otherwise his crime was undoubtedly considered graver in the eyes of law.

Incest or sexual relations between the persons related within the degrees where marriage was prohibited was considered a serious crime. According to Nārada a mother, mother's sister, mother-in-law, maternal uncle's wife, father's sister, paternal uncle's wife, friend's wife, pupil's wife, sister, sister's friend, daughter-in-law, daughter, spiritual teacher's wife, *Sagotra* relation, one seeking protection, a queen, a female ascetic, a nurse, an honest woman, and a female of the highest caste should never be violated.[190] An example of incest has

been recorded by Kalhaṇa in his *Rājataraṅgiṇī*. King Kalaśa (1063-1089 A.D.) was so licentious that he maintained sexual relation with some of his daughters-in-law as if they were the wives of the enemy.[191] The *Kathāsaritsāgara* records that one Kālarātri used to approach Sundaraka the student of her husband. When the crime was detected the willing wife of the preceptor was severely punished.[192] No doubt that in spite of severe social condemnation this crime was in practice.

It should be noted that female ascetics were also violated by the wicked. Yājñavalkya made specific reference to this feature and prescribed fine for such an act.[193] The fact that female ascetics were reckoned by Nārada among those females whose violation was considered as incest formed an important difference between his laws and those of Manu. Manu prescribed the same punishment for the violation of female ascetics as for the violation of wives of actors, dancers and other abandoned women.[194] Nārada considered it a severe crime and suggested equally severe punishment.[195]

In the monasteries also moral conduct was not always satisfactory. In fact during the reign of Harṣavardhana it became a significant feature and the King banished from the country those monks who became notorious for their immoral behaviour.[196] I-tsing also noticed that if the immoral attitude of a monk was detected his case was discussed in the monastic assembly and once found guilty he was expelled from the monastic order.[197] I-tsing stated that nuns could not meet the priests nor could the priests visit the nuns without announcing their purpose to the assembly. Moreover, the nuns were expected to go in pairs and while visiting a layman's house they formed batches of four.[198] All these rules undoubtedly were made specially to guard them from pleasure-loving people. Priests were also prohibited from coming in unnecessary contact with the females who would excite their passion.[199] Rāhulamitra, a monk whom I-tsing met thus remarked "It may be right to keep (women) off, if it is meant to prevent our evil desires".[200]

It is superfluous to add that men alone were not always responsible for adultery as the society was not absolutely free from nymphomaniacs. Yama made specific mention of them,[201]

Bṛhaspati pointed out that an adulteress who willingly visited a man's house and excited his passion should in no way be forgiven.[202] Kātyāyaṇa also nurtured the same view.[203] He, however, suggested that when a married woman was found misbehaving thus during her husband's absence she should be kept confined till her husband's return.[204] Kṣemendra's *Narmamālā* brilliantly depicts the licentious nature of the wives of the *Kāyasthas*.[205] It beautifully mirrors the then society. The *Rājataraṅgiṇī* also refers to adulterous ladies of Kashmir.[206]

Yājñavalkya's suggestion to abandon an unfaithful wife has been interpreted by Vijñāneśvara in a different way. Abandonment, as he observed, did not imply driving her out of the house but depriving her of a dignified life. She should be given food of inferior quality, compelled to sleep on the ground and be cast off only if she had a child by the stranger.[207] It resembles earlier recommendation of Nārada where he specifically suggested that she would have to live a life of utter humiliation.[208]

Dāmodaragupta's *Kuṭṭanīmatam* depicts a stirring picture of the misery of an adulteress.[209] She was cast out of the family, censured by public, and was subjected to various vexations.[209] Parāśara informs that an adulteress was treated as impure, a house was defiled by her very presence and food offered by her was refused by the *Brāhmaṇas*.[210]

A general belief thus prevailed that adultery curtailed the longevity and led to the hell of torment.[211]

In order to prevent such unhappy occurrences Bṛhaspati advised relatives to restrain a woman from slight transgressions and keep a watch on her.[212] Chastity was regarded as the most noteworthy virtue.[213] Young maidens specially motherless daughters were shielded from scandalous acts.[214] According to Vātsyāyana a married lady was generally expected to avoid the company of women of questionable characters such as female ascetics, actresses, fortune tellers and the like[215] as they often acted as go-betweens and helped in adultery.[216] Through them could a man dispatch letters[217] and various gifts and thereby attract special attention. Varāhamihira advised that women of respectable families should be protected from

Buddhist nuns, female ascetics, maids, washerwomen, flower sellers, corrupt ladies, barbers' wives, and other so-called go-betweens so that their reputation did not suffer. Nocturnal recreations, vigils, staying in another's house, consultation with sooth sayers, participating in congregational mournings and festivals were the occasions when they came in contact with men and they should be guarded on such occasions.[218] Parāśara also laid special emphasis on the protection of women. According to him one should keep a constant eye upon one's wife during the outbreak of a war, civic disturbance, pestilence or epidemic or at the apprehension of foreign invasion.[219]

Though public opinion was severe against an adulteress a gradual change can be discerned from the fresh note struck in their lenient attitude. Parāśara specifically mentioned that when a woman had been enjoyed by force or by intimidation, she revived her purity again through certain prescribed vows of mortification and by her monthly flow.[220] Devala went a step further and declared that "the women-folk of the four orders as well as those of other castes who happen to become pregnant as a direct consequence of coming in contact with the *Mlecchas* or who happen to eat the proscribed dishes willingly or unwillingly, would become pure by observing a *Kṛcchra Sāntāpana* penance". But the child born of such misfortune should have to be deserted.[221] The *Agṇi Purāṇa* made the most daring comment that women were not sullied by illegal sexual connection. She revived her cleanliness by monthly flow. A wife could be deserted by her husband only when she became pregnant by a man of lower caste. The *Purāṇa* further laid down that he should wait till the "thorn" or "sorrow bringing foreign body" (*Śalya*) had come out of her through birth and she had menstruated again and then she was again considered clean to her husband.[222]

Some later writers like Lakṣmīdhara (1100-1150 A.D.) and authors of *Brahmavaivarta Purāṇa* (11th, 12th century) were liberal enough to sanction concession to women who were enjoyed by force.[223]

The changed attitude of the society is further supported by the account left by the ninth century Arab traveller Suleiman,

He noticed that if a woman was forcibly abducted she was not treated as guilty but for willingly committing this offence punishment was death.[224]

These instances undoubtedly reveal that a laxity was necessary at a time when invasion by the Muhammadans became too frequent and ladies were the general prey of the invaders.

Of sexual crimes, perversion or unnatural offence also found special notice in the writings of ancient Indian law givers. Kauṭilya,[225] Yājñavalkya[226] and Nārada[227] made mention of sexually deviant acts performed by men and women. Homo-sexuality was known but it was considered more serious if both the offenders were maidens.[228]

Bestiality was equally discouraged though it was prevalent in the contemporary society. Viṣṇu, Kauṭilya, Yājñavalkya and Nārada have thrown some light on this aspect.[229] As cow was considered the most venerated animal a distinction was made by the law givers between cow and other animals in this connection.[230] Fine of one gold piece for such offence compared to petty fines in case of other animals like female donkey laid down by the *Matsya Purāṇa* is suggestive of the gravity of the former.[231] Parāśara also referred to the practice of bestiality with she buffalo, she camel, female donkey and she ass[232] but he emphasised that for having carnally known a cow mere fine was not sufficient but the offender was required to practise a three day penance (*Trīrātri Vrata*) accompanied by the gift of a cow to a *Brāhmaṇa* to recover his purity. Here also he singled out cow fro n the rest.[233]

Somadeva pointed out that the vow of chastity was spoilt not only by illicit love but also by unnatural method of sexual enjoyment.[234] The causes of these deviations from hetero-sexuality are extremely complex. The deviation was definitely acquired and emotional in nature, rather than inherited and physiological.

Abuse or *Vākpāruṣya* was considered as a serious offence in ancient India. Nārada has defined it thus, an offensive state-ment couched in foul and violent language in regard to the native country, caste, family and so forth of another person was termed abuse.[235] To be more precise, when a man said the

"Gauḍas are quarrelsome", "Brāhmaṇas are very greedy", "the Viśvāmitras are very cruel" he abused another person's native land, his caste and family respectively. The clause "and so forth" in the definition was added in order to include abusive speeches levelled against learning or art etc.[236] According to Bṛhaspati, injury was of two kinds, harsh speeches and physical injury and both were punishable by law.[237] Of the ten offences referred to in contemporary inscriptions four were offences of speech such as harshness of language, untruthfulness, slandering in all directions and incoherent conversation.[238] Yājñavalkya pointed out that abuse or defamation could be of various kinds. Thus an offender could incur crime by making true, false or ironical statements and by ridiculing deformed persons.[239] Moreover, defamatory words against one's relatives and abuse threatening injury to the arm, neck, eye or thigh were also considered offences.[240] Abuse involving degradation from caste or for imputing a secondary sin were also liable to fiscal punishment.[241] Nārada divided defamation into three species such as harsh (*Niṣṭhura*), vulgar (*Aślīla*) and virulent (*Tīvra*) of which harsh abuse was that accompanied by reproach, the vulgar was that comprised of insulting language and the virulent was charging one with an offence causing expulsion from caste.[242] According to Bṛhaspati when offensive language was used against or in defamation of a man's native country, village or family, without reference to any particular fact it was abuse of the first kind. When one made a vulgar reference to another's mother or sister or charged the man himself with a minor offence it was the second kind of abuse. When one charged another with having taken forbidden food or drink or taxed him with a heinous offence or maliciously exposed his weakest points it was the abuse of the highest degree.[243] Kātyāyana generalised it by stating that abuse was uttering before another what was censurable to public conception.[244] He, however, pointed out that by warning a man against mixing with one who had committed serious offence did not mean defamation provided the charge was true.[245] Nārada on the other hand recommended that if a man called an outcaste an outcaste or a thief a thief, this would itself be an offence. If that was untrue the gravity of offence would only be doubled.[246]

The most interesting feature in abuse was that the nature and gravity of crime was determined according to the superiority or inferiority of the caste or *Varṇa*[247] and the *Brāhmaṇas* occupied the most privileged position in this respect. It was considered no offence on the part of a *Brāhmaṇa* to abuse a *Śūdra* devoid of virtue[248] though for abusing a virtuous Śūdra a nominal fine was imposed.[249] But a *Śūdra* saying defamatory words to a *Brāhmaṇa* was regarded as a heinous offence and punishment was also severe.[250] On the whole it appears that the Śūdras had little voice in society and while censuring another one had to think of his social status.

Two persons, a *Brāhmaṇa* and a King were declared exempt from censure and corporal punishment.[251] It was a serious offence to censure a dutiful King.[252] Abusing a wicked King was also discouraged.[253] It implies that not the King but his position was to be venerated and deviation from that was a crime of considerable gravity.

It is remarkable that the accused was granted some concession if he followed the policy of confession and apology. From Kātyāyana it can be gathered that the King awarded only half the fine prescribed if the accused declared that what he uttered in abuse was done through ignorance, carelessness, rivalry or friendship and promised not to repeat it again.[254] The same idea is reflected in the *Matsya Purāṇa*.[255]

Daṇḍapāruṣya or cases of assault once detected, a miscreant was treated strictly. Causing pain, making blood flow, wounding, fracturing, cutting and piercing were the forms of assault or hurt.[256] Manu and Kauṭilya elaborately dealt with this topic and prescribed punishment for criminals.[257] Nārada and Bṛhaspati grouped hurting the limbs of a person with hand, foot, weapon, stone, and club, defiling him with ashes, mud and other impure substances in the category of assault.[258] According to its nature, an assault was considered light, mediocre or heavy[259] and the punishment also varied that way. Thus, an assault consisted in raising of a hand or weapon for striking a blow,[260] throwing of gravel, stones, pieces of wood, beating, tearing the skin, flesh and breaking of bone.[261] Kātyāyana considered cutting off the ear, the lip, the nose, the foot, the eye, the tongue, the penis, the hand graver to other physical injury.[262]

Yājñavalkya and Bṛhaspati were in favour of compelling the accused to bear the medical expenses of the injured person.[263] When several persons assaulted a single person the assailants were doubly charged[264] and if a man was beaten in a solitary place the culprit had to be found out by circumstantial evidence or by an oath of ordeal.[265] It should, however, be noted that for an offence through infatuation, drunkenness and the like there was no fine.[266]

Caste was an active factor in this crime-punishment relationship. The *Brāhmaṇas* enjoyed the most exalted position in society so it is only natural that an injury to them had serious repercussions. Higher social concern was exhibited if the attacker was of lower caste than the attacked.[267] The *Brāhmaṇa* legalists were in favour of amputating the very limb with which a man of low caste caused injury to a *Brāhmaṇa*.[268] But for offences against persons of lower order fine was nominal.[269] This betrays the discriminatory attitude of the society where the *Brāhmaṇas* were exempted from physical punishment while the *Śūdras* were the worst sufferers.

Assault on women or another's wife was a serious crime where punishment was generally doubled.[270] When, however, two persons assaulted each other simultaneously they shared the same fate but the aggressor and habitual mischief maker were not spared.[271] But a person who having been severely assaulted returned it to the offender was not considered guilty.[272] Thus, a man definitely enjoyed his right of self defence.

Yājñavalkya grouped offences like cutting off branches of a tree or a limb of minor beasts in the range of assaults.[273] Kātyāyana also noticed the seriousness that involved in injuring trees, shrubs and creepers.[274] Bṛhaspati went further by stating that employing hungry, thirsty or tired animals for drawing or carrying things at an improper time constituted a crime.[275]

Law givers of ancient India have classified a group of crimes under the heading of *Sāhasa* or a crime of violence. There is some confusion in the use of the term *Sāhasa* for it connotes acts of violence and therefore includes assorted crimes like theft, robbery, adultery, defamation, assault and murder etc.[276] So it has been clarified thus : when an act was committed

with violence and in the presence of men it was *Sāhasa* but an act like theft done in the absence of men and completely denied after having been done was not *Sāhasa*.[277] Apart from theft, abuse, assault, murder etc. Yājñavalkya included some other crimes under the heading of *Sāhasa*. Thus breaking open a house that was sealed, wantonly consorting with a widow, failure to respond to a call for help, raising a false alarm for help, polluting men of higher castes by touches, destroying virility of bulls and other animals, destroying common property, killing foetus of a female slave and unnecessarily abandoning near relatives were deemed as the crime of violence.[278]

Of all the crimes listed under *Sāhasa* murder deserves special attention. Bṛhaspati stated that of the different types of violence man-slaughter was the worst and for committing such heinous offence corporal punishment and not the monetary punishment was to be inflicted.[279] There were various methods of killing a person. One could commit homicide by means of weapon,[279a] poison,[280] fire,[281] beating and striking fatal blow.[282] Among the ten offences (*Daśāparādha*) recorded in contemporary inscriptions murder occupies the foremost position. It was considered a sin of body as distinguished from four sins of speech and three sins of mind.[283] Murderers were severely condemned by society. The Chammak plate grant of Pravarasena II records that a village was granted to a group of *Brāhmaṇas* which they would enjoy for generations provided that they commit no crimes of violence like murder and others.[284] It is natural that for committing these crimes they would be deprived of the privileges they were entitled to enjoy.

Bṛhaspati made specific reference to murderers as well as secret assassins who shared equal punishment.[285] In case of murder both the inciter and perpetrator were punished.[286] According to Kātyāyana he who committed a crime of violence, who was a helper, who gave advice as to the way of carrying out the act, who gave asylum to the offender, who supplied weapons and food, who incited an offender to start a fight, who showed the method of destroying the man, who connived at the commission of an offence, who exposed the faults of the person killed, who gave his approval to the offence, who though

able did not prevent the commission of the crime were all considered perpetrators and liable according to the nature of their guilt.[287] When several persons killed a man, the miscreant who gave the fatal blow should be responsible for the murder and his associates would be awarded half of the punishment.[288]

According to the *Matsya Purāṇa*, if in a road accident injury to a person was caused due to driver's lack of skill then the master of the cart was also to be fined if he knowingly employed him while a skilful driver himself should be punished for an accident.[289] When an accident occurred for reasons beyond the driver's control, like breaking of an yoke, snapping of a nose-string of bulls and the like, the driver was exempted from punishment.[290]

When the body was found but the murderer could not be traced then investigation should be made by drawing an inference from his previous enmities.[291] The absconding murderer had to be detected by interrogation of his immediate neighbours and their neighbours, friends, relatives and enemies by applying four conciliatory methods[292] (viz. questioning, bribery, intimidation and violence). Moreover, women belonging to the deceased and those in love with other men should also be questioned[293] and people living in the vicinity of murder should be interrogated.[294]

As abortion was not legalised destruction of a foetus[295] was considered a crime of violence and equivalent to murder even if a woman killed her own child in the womb.[296] Corporal punishment was not also pronounced to a pregnant lady as that would mean destruction of another life. Yājñavalkya, however, pointed out that for killing of a foetus which was considered a great crime (*Mahāpātaka*) a woman was generally abandoned.[297] According to Kātyāyana even a *Brāhmaṇa* otherwise immune if found guilty of causing abortion deserved physical punishment.[298]

From the *Smṛti* works it appears that society exhibited no magnanimity for women murderers. Yājñavalkya had no sympathy for women who murdered males.[299] He made mention of those who administered poison or set fire, killed their husbands, preceptors and even own children.[300] From

the *Daśakumāracarita* it is gathered that a lady named Dhūminī attempted to kill her husband but failed. Her vile conduct was revealed and she was severely punished.[301] The eternal mother-in-law problem might have instigated one Devadattā to murder her mother-in-law for which she was publicly impaled.[301a]

Intentional murder of a woman was highly condemned and it was held that there was no purgatory rite (*Prāyaścitta*) to expiate this grave sin.[302] It is interesting to note that Kātyāyana who elsewhere noticed that the Brāhmaṇas were exempted from capital punishment[303] specifically pointed out that for killing a *Brāhmaṇa* woman with sharp weapon or for murdering a chaste lady even a *Brāhmaṇa* criminal should be condemned to death.[304] The *Mṛcchakaṭika* also relates that Cārudatta, a *Brāhmaṇa* convicted of murder of Vasantasenā was sentenced to death by king Pālaka.[305]

Otherwise, however, a *Brāhmaṇa* murderer enjoyed a privileged position in society. Manu prescribed him banishment instead of death sentence[306] and the same concession was granted even during the period under review. For all possible crimes like murder a *Brāhmaṇa* was generally spared from death sentence.[307] Hiuen-tsang records that King Harṣa simply banished a group of *Brāhmaṇas* who planned to murder the King[308] instead of pronouncing death sentence.

As the person of a *Brāhmaṇa* was considered sacred and as there was a tendency to preserve this intellectual group, murder of a *Brāhmaṇa* was considered a severe offence. Manu declared that the worst sin was to kill a *Brāhmaṇa*[309] and there was no expiatory rite that would clear off the sin of *Brahmahatyā*.[310] Contemporary inscriptions also reveal that *Brahmahatyā* was severely condemned in society.[311] Yājñavalkya grouped it as one of the five *Mahāpātakas*.[312] According to Nārada, the *Brāhmaṇas* occupied the foremost position among the eight sacred objects and naturally this idea was active while promulgating law, hence this refrainment.[313] Bṛhaspati frankly stated that if a man refrained from killing a *Brāhmaṇa Ātatāyin* deserving to be killed for his heinous attitude he would obtain special merit for his piety.[314] Kātyāyana was also in favour of sparing the life of a *Brāhmaṇa Ātatāyin*.[315] It would appear

that the attitude of the contemporary *Smṛti* writers weighed heavily in favour of the Brāhmaṇas because they aimed at preservation of the *Brāhmaṇa* community who occupied the supreme position in society for their learning, birth and merit.

Though man-slaughter was considered the worst crime against society, legal writers laid down some rights of private defence for which one could kill a man without being considered guilty. This may be called justifiable homicide.

The *Matsya Purāṇa* declared that one could kill a man without hesitation if he appeared as an *Ātatāyin* though he might be a teacher, a child, an old man or a learned *Brāhmaṇa*. In killing an *Ātatāyin* the killer incurred no sin whether he killed him in a lonely place or in public because in such case wrath met wrath.[316] Now a question may arise as to whom the society considered the *Ātatāyins*. The *Vaśiṣṭha Dharma Sūtra* provides the answer. An incendiary, a poisoner, a man armed with weapon, a robber, one who wrested a field or carried away other's wife were *Ātatāyins*.[317] It should, however, be noted that an *Ātatāyin* was a person who was about to set fire or kill a man or was actively engaged in such crime. The man who had set fire or seized property in the past was not lcoked upon as an *Ātatāyin*. Moreover, Kātyāyana pointed out that he should be considered as an *Ātatāyin* against whom no severe offence was committed by the attacked (*Anākṣārita pūrvo*). Otherwise the defender had no right to kill an *Ātatāyin*.[318] Sri Siti-Kaṇṭha Vācaspati has clarified the point. Thus, for killing a culprit who had set fire to a man's house, if the owner of the house took the help of a weapon then he should not be considered as an *Ātatāyin* because the incendiary had first committed an offence against him, so he had no right to kill the owner for self defence. He further adds that the owner should attack the offender immediately after he had committed the crime. There was no right to kill the criminal in a different place at different time and if he did so, then he was also looked upon as an *Ātatāyin*. If he had such right to take revenge at any time and any place then crime would have been more frequent and further complications would arise.[319]

According to Bṛhaspati by killing an aggressor, a man did not commit sin by any means. He who took the life of

one approaching with the intent to murder him was not an offender.[320] There were, however, some limitations of the right of self defence. Thus, a man could attack an *Ātatāyin* only when there was no time to inform the king or when delay would prove ruinous[321] and could kill him and when other measures of self defence failed absolutely.[322] Kātyāyana recommended that it was no crime to kill an *Ātatāyin* who was about to kill but when he had desisted from that act, the defender should arrest him instead of killing.[323] He, however, added that an *Ātatāyin* superior to the attacked by virtue of his meditation, Vedic learning and birth should not be killed as Bhṛgu allowed killing only when the offender was of a lower caste than the *Brāhmaṇa*.[324] Devala, on the other hand, suggested that when an assassin was attacked by a man with upraised weapon if the attacked killed him even if he was a *Brāhmaṇa* the slayer did not incur the sin of *Brahmahatyā*, in fact he would incur the guilt of *Brāhmaṇa* slaughter if he did not kill him.[325]

There were some cases of homicide in which the offender should not be punished when it was due to an accident over which he had no control. This may be regarded as involuntary homicide. From the *Smṛti* works it can be gathered that in certain circumstances the driver, owner or passenger of a conveyance were not to be blamed for the accidental killing of a man.[326]

Yājñavalkya further pointed out that for the offence of killing a man committed by a quadruped like a bull, an elephant or other animals, the blame should not accrue to the owner when he was loudly crying "be away". Similarly if a man was killed by the throwing of a piece of wood, clod of earth, stone, an arrow, by means of the arms or by an yoked beast, no blame should be accrued to the offender provided he had given sufficient warning to withdraw from the place.[327] *Mitākṣarā* added that penance for doing anything, however, did verily exist.[328]

Though the contemporary law givers had not classified the crimes against the state under any special heading, an attempt is made here to group them as political crimes which were of considerable significance.

From a very early time law givers intended to glorify the kingly office as the king was the protector of his subjects. Manu remarked that the creater had created the king with the essential parts from *Indra*, *Pavana*, *Yama*, the Sun, *Agṇi*, *Varuṇa*, the Moon and *Kubera*, the Lord of Wealth and therefore he surpassed all beings by the majesty.[329] Kauṭilya stated that it was the King in whom the duties of *Indra* (the Rewarder) and *Yama* (the Punisher) were blended, hence a king should never be despised.[330] Nārada commented that whatever a king did was right because protection of the world was entrusted to him and on account of his majesty and magnanimity towards living creatures.[331] Even in such early works as the *Ṛg Veda* there are hymns glorifying the office of the king who was identified with the gods.[332] Kāmandaka has also eulogised the royal office.[333] Kātyāyana considered a King as the protector of the helpless, the home of the homeless, the son of the sonless and the father of the fatherless.[334] So a concept of the sacred character of kingship had grown and obedience to the king was regarded as imperative for the subjects. Some legal writers went to that extent and declared that any king good or bad was better than no king at all. Nārada held that a ruler though worthless must be worshipped by his subjects.[335] It should be noted that it was not the king but the kingly office that actually invoked respect. As this was the general idea and the kingly office carried special dignity and sanctity, any offence against the king was treated very severely indeed. Yet it should be borne in mind that political offence was by no means rare. People had their grievances and not all of them did like the various royal policies; as a result they expressed their dissatisfaction by unlawful acts against the king or state and thus political crimes. Nārada pointed out that one must not treat a king with contempt, particularly never scold him but pay obedience to his bidding. Disobedience would bring on death.[336] According to him it was not permissible to advise or rebuke a king on account of his dignified status and sanctity, unless he had swerved from the path of his duty.[337] For offences against the royal commandments Nārada prescribed monetary and corporal punishment.[338] He further added that if a man assailed even

a wicked king he was more criminal than one who had committed a hundred times the crime of a *Brāhmaṇa* murder.[339] The *Matsya Purāṇa* advocated punishment in an aggravated form for interfering with the authority of the King.[340] Bṛhaspati was much lenient and suggested lighter punishment for a person inimically disposed towards the King.[341]

Indulgence in royal sports, adopting the occupation of a King, speaking what was distasteful to him and stealing royal wealth, violation of royal commands and creating dissatisfaction among the constituent elements of the state were all included in the list of offences against the King.[342]

It is significant that Kāmandaka emphasised that for the offence of subverting the state there was no other punishment than death, though he held that death sentence was to be avoided even for the gravest offence.[343] He pointed out that a King should kill without delay the wicked people who singly or collectively proved harmful to the Kingdom.[344] In the *Mudrārākṣasa* there is an instance of *Śreṣṭhi* Candanadāsa being taken to the execution ground for doing what was politically unwholesome (*Rājapathyakāriṇam*).[345]

Any attempt at the life of a king was suppressed ruthlessly. Special care was taken for the security of a King from the evil people[346] and spies were employed for that purpose. In spite of such efforts to safeguard a King there were occasional attempts on his life. In the *Mudrārākṣasa* we find mention of poison-maid (*Viṣa-Kanyakā*) employed for killing the king.[347] Inscriptions also refer to poisoners of Kings.[348] Somadeva notices that employment of hired assassins and wicked priestesses for such criminal acts like murder was in vogue.[349] Bāṇa narrates how Skandagupta, the commander of elephant force of Harṣa's army warned the emperor against trusting each and everybody and quoted several instances of Kings who met death or destruction due to their own carelessness and treachery of their subordinates.[350] Even women were not to be trusted[351] because many of the Kings were killed in the queen's chamber.[352] Hiuen-tsang stated that King Rājyavardhana was murdered in a Conference by Śasāṅka due to the fault of his own ministers.[353] The *Daśakumāracarita* relates an incident of political crime. An evil minded *Brāhmaṇa*

named Kāmapāla, the counsellor of King Caṇḍasiṁha clandestinely poisoned the sovereign and the heir apparent Caṇḍaghoṣa. He further plotted to murder Siṁhaghoṣa. But the plot was exposed and the judge decreed deprivation of vision as the legal penalty for this *Brāhmaṇa*.[354] From the records of Hiuen-tsang we learn that King Harṣa himself once became a prey to attempted murder. One day King Harṣa while descending the steps of a *Stūpa* was suddenly attacked by a strange man with a knife in his hand. The attempt, however, was foiled. Other Kings assembled there demanded that the culprit should be instantly killed but King Harṣa inquired of him about the reason behind such attempt and the culprit confessed that he was a puppet in the hands of a group of *Brāhmaṇas* who had resentment due to Buddhist leanings of Harṣa. On investigation *Brāhmaṇas* confessed that they plotted to burn the tower and thereby create a public confusion and assassinate the King at that and they bribed the man who had made an unsuccessful attempt to murder the King. Harṣa thus punished the chief plotter and banished other *Brāhmaṇas* to the frontiers of India.[355] Court intrigues and political murder were a common theme of *Rājataraṅgiṇi*.[356]

Disloyal feudatories were kept under check after the failure of rebellion and were subjected to various indignities.[357] It is also gathered that they had to surrender their precious possessions as punishment for disloyalty and even their wives were kept in prison.[358] It is quite clear that royal policy was not always liked by the people so that as an outburst of resentment some political crimes were committed. As early as the period of the *Taittirīya Saṁhitā* Kings were driven away when they were not liked by the people.[359] Manu, however, made provisions for depriving an oppressive ruler of his life and kingdom.[360] Yājñavalkya also supported this view.[361] Kātyāyana was also not in favour of an oppressive and tyrant King.[362] Thus our legal texts on the one hand intended to prohibit the people from using physical force against the King and put some religious restraints[363] and on the other they enjoined some royal obligations. It was, however, not at all possible to prevent political offences altogether. The *Mṛcchakaṭika* makes frequent references to political prisoners and their ultimate fate.[364]

Whoever found guilty of helping the enemies of the state was sternly punished.[365] For the false conduct on the part of royal officials death sentence was prescribed.[366] Kalhaṇa notices that for gathering full information severe torture was applied to the traitor.[367]

The *Matsya Purāṇa* echoed the views of Manu that one who destroyed or broke open royal treasury or arsenal or robbed away royal treasure should be treated ruthlessly.[368]

Bribery and corruption were also not unknown in the society. Kṣemendra in his *Daśāvatāracarita* advised the King to remove from office such ministers, generals and priests who were guilty of acceptance of bribes.[369] Kalhaṇa records several instances of accumulation of large fortune by royal officials. Bijja became richer than the King by taking recourse to unfair means.[370] Ānanda rose to high office by offering bribes to royal counsellors.[371] In his *Narmamālā* Kṣemendra refers to the unscrupulousness, hypocrisy and the habit of accepting bribe among the royal officials.[372]

Besides these, there were some offences which can be grouped as judicial crimes. False witnesses were always seriously condemned.[373] According to Nārada, he who concealed his knowledge at the time of trial, although he had previously related (what he knew) to others deserved specially heavy punishment for he was more criminal than a false witness.[374]

For setting up false evidence to win a cause Kātyāyana recommended that the suborner should not only be punished but should be defeated in the case.[375]

Orders of the courts were expected to be obeyed. If the accused or the defendant absconded after receiving summons judgment was to be given against him and the king was to punish him.[376] According to Bṛhaspati when a man who had a family and relations did not appear before the court through pride after having been summoned should be punished in accordance to the nature of the accusation.[377] If a witness being summoned did not make his appearance without being ill, he should also be fined after a lapse of three fortnights.[378]

Defamation of faultless witnesses in court was considered as an offence. When witnesses summoned in a suit were faulty the opponents were allowed to expose them. But a litigant

trying to cast a blemish on faultless witnesses was liable to a punishment.[379]

Maintenance of sanctity of temples and idols was generally considered a great responsibility. It was a crime to defile a temple or idol. For stealing idols of gods,[380] destruction or damage of temples and idols[381] and for abuse of gods,[382] severe punishments were prescribed by the law givers. But the criminal practice was not unknown. In the *Yaśastilaka campu* of Somadeva a spy relates to the king about a minister who broke and melted down valuable idols and replaced them by another of lesser value.[383] Sometimes he would sell an idol.[384] From the *Rājataraṅgiṇī* we learn that during the reign of Avantivarman (855-883 A.D.) a prominent feudal baron was beheaded for the crime of robbing the temple of *Bhūteśa*.[385] Strangely enough, some of the kings of Kashmir were prone to this criminal tendency. Saṁkaravarman plundered sixty four temples of gods.[386] Kalaśa removed copper images of the Sun called Tāmrasvāmin from the *Vihāras*.[387] King Harṣa not only plundered the treasures of temples but also appointed a special officer called '*Devotpāṭana-Nayaka*' for the uprooting of idols.[388] These malpractices were also prevalent in the later periods. Prahlādanadeva, a prince of Gujarat of twelfth century A.D. melted a brass statue of Jīna.[389] Reasons behind these offences were either economic or religious fanaticism.

From a thorough study of contemporary legal writings it appears that there were some crimes which were committed by the people due to lack of civic sense and they caused hardship to other fellow members of the society. R.P. Dasgupta has justly remarked "it seems that Hindu legal genius manifested itself in the most pronounced way in the laws regarding public health, sanitation and convenience".[390] Such early works as that of Manu have recorded that for voiding or dropping ordure on the public road during normalcy the miscreant was not only fined but required to clean the road.[391] Kauṭilya also prescribed fine for such acts.[392] In the *Matsya Purāṇa* one finds the continuity of the same practice. Like Manu the *Purāṇa* stated that if a man threw dirty and filthy things on the main road in normal times (*Anāpat-Kāle*) he had not only to pay the fine but he was compelled to clean the road.[393] Like Manu, the *Purāṇa*,

however, repeated that the invalid, the old, pregnant women and children were exempted from the task of cleaning the public road and were punished by royal reproach.[394] Nārada remarked that a cross road, the sanctuary of a deity, a street and a public road must not be obstructed by a place for ordure, terrace, a pit, an aqueduct, the edge of a thatch and the like and for making such obstructions the king should impose on the wrong doer a fine of highest degree.[395] Bṛhaspati also pointed out that a public road should not be obstructed by any one. He who purposely obstructed public road by parking carts, making pit, planting trees and voiding excrements should be treated as offender.[396] Same rule was prescribed even by Kātyāyana.[397] It thus appears that the law givers paid special attention to keep the roads clean and free and thereby ensure easy passage for public. But people were not always prompt and law abiding and due to lack of civic concept and callousness they did commit uncivic acts.

From the *Matsya Purāṇa* it is learnt that for stealing the stored water of the pond and for misuse of newly reserved water people were punished.[398] Kātyāyana also provided that for defiling a tank, a garden or holy water by throwing dirty things and for polluting sacred places by washing soiled linens one was not only fined the first amercement but also required to clear off the dirt.[399] Śaṅkha was more strict and prescribed capital punishment or mutilation for defiling tanks, ponds or other water sources.[400] As welfare of the neighbours was not always borne in mind, special rules were laid down by the law givers to stop people from doing anything harmful. Thus people were directed not to make a privy, a fire place, a pit or a receptacle for rejects of food and other filthy things very close to the house of his neighbour.[401] A householder was further advised not to interfere with others by construction of a water course that would drain off rain water to another's house.[402]

Blocking of drainage was also an offence. Kauṭilya prescribed drainage for every house and imposed fines for blocking them.[403] The law writers of the period under review were as strict in this matter. Bṛhaspati pointed out that a channel for the exit of water must not be blocked up[404] and Kātyāyana enjoined penalties not only for blocking the drains but also

for blocking other waterways.[405] In fact, for the sake of the welfare of public water courses were required to be kept free from obstruction.[406]

A neighbour was expected to honour other man's boundary and to check his animals from straying on to the others' land. The law givers felt the need of a common grazing ground[407] and the owner of a field was required to construct proper fences.[408] When cows straying through the fault of their keeper had entered a field crossing the fence no punishment should be inflicted on the owner of cows, but the herdsman alone was punishable.[409] When the grain was completely destroyed the owner of the cattle had to compensate and pay the prescribed fines while the herdsman had to be inflicted with corporal punishment.[410] When the cattle grazed in other man's plot of land within the sight of the keeper the latter was considered guilty like a thief.[411] Nārada remarked that a householder's house and his field were considered two fundaments of his existence. Therefore a king should take care of their preservation,[412] and it was the foremost duty of the king to punish the wrong doer because by pardoning an offender he committed the same offence as also by punishing an innocent person.[413]

Footnotes

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5. *Manu* I. 81-82.
6. *Nār.* I. 1.
7. *Bṛhas.* I. 1.
8. *Kām.* II. 37-43.
9. *R.V.* I. 65. 1, IV. 38. 5.
10. Ibid., X. 4. 6.
11. *Mahā.*, XII. 12. 29.
12. *Āpas.*, 2. 9. 25. 15, *Baud.*, 2. 3. 31, *Gaut.*, 21. 1.
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15. *Kāt.*, 810.
16. *Nār.*, XIV. 12.
17. Ibid., App. 1.
18. *Bṛhas.* XXII. 2.
19. *Ibid.*, XXII. 3-4.

20. *Yāj.*, II. 275, *Nār.* XIV. 13, *Matsya* 227. 101-105, *Agni.*, 227. 32-36.
21. *Nār* , XIV. 14-16.
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23. *Yāj.* II., 275.
24. *Manu.*, VIII. 341, *Matsya.*, 227. 110-114, *Kāt.*, 822A.
25. *Yāj.*, II. 166, *Matsya.*, 227. 112-113.
26. *C.I.I.*, III, p. 124.
27. *G.I.*, VIII, p. 287.
28. *C I.I.*, III, pp. 189, 218.
29. *I.A.*, IV, p. 175, E.I., IX, p. 83.
30. *D.C.* Ryder, p. 176.
31. *Śak.*, VI, *Mālav.*, V. 10.
32. *B.J.*, XVIII. 5, XIX. 1, XXI. 7.
33. *Uttarādhyayana Sūtra*, 9. 28.
34. *Mṛccha.*, III.
35. Ibid., III.
36. Ibid., III.
37. Ibid., III.
37a. J.C. Jain, *Life in Ancient India as depicted in the Jain Canons*, Bombay 1947, pp. 66-67.
38. *D.C.* Ryder, p. 81.
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40. *Y.C.*, VI-VII.
41. *Caryāgīti*, No. 36, 4, vide Niharranjan Ray, *Bāṅgālīr Itihās*, Calcutta 1356 B.S., p. 730.
42. *Caryāgīti*, No. 2.
43. *R.T.* III. 16-17.
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45. *Manu* , VIII. 323.
46. *Nār.*, App. 28.
47. *Bṛhas.*, XXII. 18.
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49. *Mṛccha.*, IV. 6, *Dhatruhat-saṁgatam harāmi na tathā Bālam dhanārthī Kvacit.*
50. *Yāj* , II. 274.
51. *Mālav.*, V. 10.
52. *Nār.*, App. 32.
53. *Manu.*, IX. 277, *Vis.*, V. 136.
54. *A.S.*, 3. 17.
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56. *Bṛhas.*, XXII. 5-6
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70. Ibid., p. 22.
71. *Bṛhas.*, XVII. 5-6.
72. *D.C.* Ryder, p. 38.
73. Sachau, I, p. 262.
74. *Life*, pp. 87-88.
75. *Manu.*, VIII. 259.
76. *Nār.*, App. 2-3, *Bṛhas.*, App. 3-4, *Kāt.*, 810 ff.
77. *Kāt.*, 810.
78. *Nār.*, I. 135 ff. *Bṛhas.*, VIII. 21 ff.
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80. *Nār.*, I. 137, *Bṛhas.*, VIII. 23.
81. *Nār.*, I. 137, *Bṛhas.*, VIII. 22-23.
82. *Kāt.*, *J.A.H.R.S.*, II, p. 125.
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85. *Nār.*, I. 143.
86. *Kāt.*, 282.
87. *Manu.*, IX. 232, *Vis.*, V. 90.
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92. *E.I.*, XIV, p. 182.
93. *I.A.*, XXX, pp. 211-12.
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117. *A.S.*, 4. 2-3.
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130. Ibid., 246.
131. *Manu.*, VIII. 203.
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134. *Matsya.*, 227. 184-85.
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136. *Kālavilāsa*, VIII.
137. *Yāj.*, II. 251.
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139. *Agni.*, 162. 51-57.
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141. *Manu.*, IX. 223.
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144. *Nār.*, App. 2.
145. *Kāt.*, 933-934.
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310. Ibid., XI. 89.
311. *C.I.I.*, III, pp. 71-72, 242.
312. *Yāj.*, III. 227.
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314. *Bṛhas.*, quoted in *Sm. Can.*, p. 315.
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316. *Matsya.*, 227. 115-117, *Manu.*, VIII. 354.
317. *Vaś. Dh. S.*, III. 15.
318. *Kāt.*, quoted *Prāyaścitta Viveka*, ' vide Sitikantha Vacaspati, *Prācīn Bhārater Daṇḍanīti O Vicāra-paddhati*, Calcutta 1333 B.S. p. 104.
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3

PUNISHMENT

AS VIOLATION OF LAWS AND CODES PRESCRIBED by the State and the Society is very frequent, penalties and punishments naturally become an imperative as a deterrent. The word punishment derives its origin from the Greek root "Pu" meaning to cleanse.[1] In the same way the Sanskrit term "*Dam*" means to check or to restrain and the term *Daṇḍa* means a stick, staff or rod; a symbol of authority and punishment. It has been justly remarked that it is needed as retribution, restraint and reformation.[2]

Gautama points out that the word *Daṇḍa* is derived from the root *Dam* (to restrain) and the king should check the miscreants and wrong doers by means of *Daṇḍa*.[3] As early as the Vedic age punishment was considered a matter of great social significance and it was supposed that punishment removed the guilt of misdeed and the delinquent was then freed from the wrong he had done.[4]

The *Mahābhārata* also records that the king should set the criminal free from sin by inflicting punishment in accordance with law.[5] The early law givers gave their variant opinions on the need of punishment to check criminal behaviour against the society. According to Manu punishment was suggested by the sages in order to cure unrighteousness and to preserve righteousness unhampered.[6] He envisaged the idea of *Mātsya-nyāya* without the system of punishment.[7] Viṣṇu has pointed out that a king should show honour to the righteous and inflict punishment on the unrighteous.[8] He further adds

"where punishment with a black hue and a red eye advances with irresistible might, the king deciding causes justly, there the people will prosper."[9] Kauṭilya was also eloquent about the need of punishment to check the evil.[10] The writers of the period under review gave their opinions on the same line in the matter of punishment. Kālidāsa has beautifully narrated the need of punishment of those who deserve it as necessary for preservation.[11] This idea is also reflected in the *Mahābhārata* which states that "if by destroying an individual or a whole family the kingdom becomes safe and danger-proof it ought to be done (in the interest of Society)".[12] Repeating the idea of Manu, Yājñavalkya remarks that *Daṇḍa* rules over all people, it protects them and remains awake when the guardians of law are asleep and it is regarded as *Dharma*.[13] The *Matsya Purāṇa* defines *Daṇḍa* as suppressor of those who are unrestrained and punisher of those who are imprudent.[14] According to Nārada wicked people should be punished by the king.[15] As fire is not polluted by burning, so a king is not polluted by inflicting punishment on deserving criminals.[16] Kātyāyana holds the view that the king is the protector of the helpless, home of the homeless, son of the sonless and father of the fatherless person.[17] Thus it is his duty to protect the people from the evil doers and to restrain the delinquent by inflicting punishment commensurate with the wrong done. Bṛhaspati clearly pointed out that when the safety of many could be ensured by destroying a single offender, his execution was productive of religious merit.[18]

It should, however, be noted that like the writers of previous period the law givers spoke in favour of just punishment. Kāmandaka repeated the ideas of Manu[19] and Kauṭilya[20] when he said that *Daṇḍa* should neither be too severe nor too mild but be just in accordance with the offences committed and that while its application without afflicting the people led to good fortune, its infliction for oppressing the subjects led to the destruction of a king.[21] The *Nīlamata Purāṇa* echoed the same idea that punishment should be inflicted upon the culprits in accordance with the gravity of crimes. The king would therefore be neither unnecessarily hard nor unnecessarily mild.[22] So before inflicting punishment a king

had to consider many aspects instead of arriving at hasty conclusions. Nārada remarked that the nature of the offence, its time and place should be carefully considered and ability and motive of the offender should be thoroughly examined before inflicting punishment.[23] There was to be a searching enquiry into the whole case and the punishment would be decided after that only.[24]

Different authors of law classified punishments differently. Manu, Yājñavalkya and Bṛhaspati referred to four types of punishments like gentle admonition, harsh reproof, fine and corporal punishment.[25] To these Bṛhaspati also added banishment.[26] Nārada, however, made a broad two-fold division of punishments, viz. corporal and monetary. He further subdivided corporal punishment into two groups and monetary punishment into more than one kind.[27] According to Kāmandaka punishment was of three types, namely execution (*Vadha*), fines and corporal punishment. Execution was again subdivided into two varieties namely the public and secret.[28] Kātyāyana also made mention of monetary and physical punishments.[29] According to Bṛhaspati a gentle admonition should be administered to a man for light offence, harsh reproof for a crime of first degree, fine for a crime of second or middlemost degree but corporal punishment was to be reserved for graver offences.[30] In the works of Bāṇa we find indirect references to fines, rigorous imprisonment,[31] amputation of limbs[32] and execution.[33]

It appears from the early legal writings that no one was exempt from royal punishment whether he be the friend, brother, priest or parents[34] of the king. From Yājñavalkya we learn that a king should punish his brother, son, *Ācārya* or preceptor, father-in-law, and maternal uncle if any one of them fell from the path of law.[35] But he did not mention about the parents but Vijñāneśvara held that parents were exempt from royal punishment.[36] It is likely that strict rules of the time of Manu were relaxed in course of time. Bṛhaspati suggested that a king should punish elders, domestic priests and persons commanding respect with gentle admonition only.[37] Even a king himself was liable to punishment. Unlike the English aw which presupposes that "the king can do no wrong" an

ancient Indian king was not above law. So when a commoner would be fined one *Paṇa* only for an offence, a king according to Manu was to be liable to pay 1000.[38] Kauṭilya suggested that for an offence the King should pay the fine to god *Varuṇa* which should afterwards be distributed among the *Brāhmaṇas*.[39] The same idea was repeated by Yājñavalkya.[40] But there is no mention of corporal punishment prescribed for a king. Nārada remarked that two classes, a *Brāhmaṇa* and a king were exempt from censure and corporal punishment.[41] It implies that king was liable to monetary punishment only.

The Chinese travellers who visited India during the period under review had left in their accounts some traces of the offences frequent in India of that time and their respective punishments. Though they furnish an insufficient and generalised picture, they throw welcome light on this aspect of society and thereby supplement our knowledge derived from indigenous sources. Thus Fa-hien who came to India during the fifth century A.D. noticed that in the 'Middle India' the king governed without decapitation or other corporal punishments. Criminals were simply fined lightly or heavily according to nature of their crimes. Even in circumstances of repeated attempts at rebellion they had only their right hands cut off.[42] Hiuen-tsang in the seventh century A.D. had recorded some criminal tendencies of the time. Yet he observed that as the government was honestly administered and the people lived together on good terms the criminal class was small. The statute law, however, was occasionally violated and plots made against the king when brought to light, the offender was imprisoned for life. He did not suffer any corporal punishment but alive or dead he was not treated as a member of the community. For offences against social morality and disloyal, unfilial conduct the punishment was to cut off the nose, ear, hand or foot or banishment. Other offences were punished with fine.[43]. I-tsing, another Chinese pilgrim of the second half of the seventh century A.D. dealt mainly with the people of monastic order and recorded that if an offence was detected in the monastic circle, the case was discussed in the monastic assembly and the man found guilty was punished by expulsion.[44]

It is interesting to note what specific punishments were generally prescribed for particular crimes. To start with theft, we find that from nominal fines to death sentences were prescribed by the law givers according to the gravity of the offence. Thus for stealing petty articles like woods, cane, grass, clay utensils, bamboo, bone, leather, vegetables, salt, milk, molasses, cooked and prepared food, oil, spirituous liquor etc. Nārada prescribed a fine five times the value of the article stolen.[45] Contemporary inscriptions also refer to fines as a general punishment for theft.[46] Bṛhaspati held the view that for stealing grass, wood, flowers, fruits etc. the criminal should have his hand cut off and stealers of grain should pay fine ten times the price of the stolen amount.[47] Nārada, however, had made a provision that a *Brāhmaṇa* had right to collect fuel, flower, and water without being considered a thief.[48] Kātyāyana also remarked that a man could take from other man's land two sugarcanes, two *Mūlakas*, two cucumbers or melons, five mangoes or pomegranates and a handful of dates and corn such as rice, wheat, gram and the like without being liable to punishment.[49] Yājñavalkya on the other hand noticed that a *Brāhmaṇa* fasting for three days could only take grain from other's place without permission of the owner and he should state the reason if asked but men of the lower caste should not in this way take grain from that of higher castes.[50]

For stealing articles sold by weight and measure the fine should be at least eight times of their amount.[51] Corporal punishment or death should be inflicted on him who had stolen more than ten *Kumbhas* of grain.[52]

For theft of gold and other precious metals, gems and fine clothes corporal punishment or death was the general punishment.[53] From Kālidāsa we learn that theft of precious jewels was punishable by death. The same idea is reflected in the *Agni Purāṇa*.[54] It was prevalent even during the times of Manu.[55] Kauṭilya prescribed capital punishment for simply entering a goldsmith's workshop.[56]

For lifting domestic animals, Nārada advocated fine according to the size and value of the animal.[57] He further added that for kidnapping a man highest fine should be inflicted; for stealing a woman confiscation of entire wealth, for

stealing a maiden corporal punishment[58] and for stealing a female slave mutilation of half of his feet was to be enforced.[59] Bṛhaspati and the *Agni Purāṇa* on the other hand prescribed fine as well as death sentence for kidnapping any man or woman.[60]

For house-breaking Bṛhaspati's suggestion was that the criminal should be compelled to relinquish his plunder and be inflicted capital punishment.[61] In the *Daśakumāracarita* one Arthapati was condemned to death for theft but on his behalf one Dhanamitra pleaded that generally merchants were exempted from death sentence, so let Arthapati be punished with confiscation of property and banishment.[62] Elsewhere Daṇḍin narrated the story of one Arthapāla who, when caught in a burglary expedition, was sentenced to death.[63] The *Agni Purāṇa* prescribed impalement for house-breaking.[64]

According to Yājñavalkya and Nārada when the offence had been committed for the first time, a *Granthibhedaka*, a cut-purse or opener of knots of cloth, should have his little finger and thumb cut off,[65] on second offence he should be deprived of a hand or a foot[66] while *Mitākṣarā* commenting on Yājñavalkya added that for a third offence death alone was the punishment.[67] The law givers of the period under consideration seem to be more lenient from their early counterparts who prescribed capital punishment for this offence.[68]

Robbers who infested a country, village or a house or disturbed sacrificial acts were stripped of their entire wealth.[69] They were also compelled to restore their plunder, being properly punished.[70] Amputation of limbs was also prescribed for robbery.[71] Robbery was considered as one of the four heinous offences.[72] So the series of punishments which were ordained by the wise for three kinds of violence or *sāhasa* (the lowest, middling and highest) were equally applicable to this type of crime.[73] For *sāhasa* of the lowest and middlemost degrees Nārada prescribed monetary punishment. But for *sāhasa* of the highest degree not only a heavy fine but corporal punishment, confiscation of entire property, banishment, branding and amputation of limb were prescribed.[74] Thus, robbers were given these punishments according to the nature and severity of their crimes.

As the *Brāhmaṇas* occupied the supreme position in social hierarchy, theft on their part was severely condemned. According to Nārada the crime of a *Śūdra* in theft was eight-fold, that of a *Vaiśya* sixteen-fold, of a *Kṣatriya* thirtytwo-fold while of a *Brāhmaṇa* it was sixtyfour-fold.[75] Though the *Brāhmaṇas* were exempt from corporal punishments,[76] they were not free from other punishments. So those who deserved capital punishment and amputation of limbs had to pay heavy fines.[77] According to Kātyāyana a *Brāhmaṇa* should pay eight times the fine to be imposed upon a *Śūdra*.[78] Moreover, they were banished, branded and shaved.[79] A dog's foot was branded on his forehead when a *Brāhmaṇa* committed theft.[80] When a religious man and diligent scholar of the *Vedas* had committed the crime he had to suffer imprisonment as well as a compulsion to perform a penance after restoring the stolen articles to the owner.[81] Kātyāyana prescribed branding and confiscation of property as the punishment for a *Brāhmaṇa* thief and the one who was neither educated nor learned should do hard labour for the king.[82] Thus on the one hand concessions were granted to the *Brāhmaṇas* at the time of inflicting punishment, on the other they were expected to maintain a high standard of morality and were severely punished for light laxity from the path.

It is remarkable that not only the thief who had actually committed the crime but his associates or helpers were also punished as thieves. So Yājñavalkya prescribed the highest amercement for any one who knowingly offered help to a thief.[83] Nārada, Kātyāyana and the *Matsya Purāṇa* laid down that men who willingly offered food, fire, water or shelter to thieves, who received or purchased stolen articles, showed them the way, defended and concealed them were to be treated as thieves and be punished accordingly.[84] Kātyāyana further added that those who purchased stolen property or received it as a gift should be punished like the thieves.[85] Manu did not specifically mention knowledge of a crime as a condition for punishment but his commentator Kulluka interpreted in that way (*Cauratvam Jñātvā*).[86] In this way not only the culprits but their associates were also brought under the purview of law.

Like open thieves and robbers open rogues were also punished severely. Forgers, adulterers, counterfeiters of coins, fabricators of weights and measures, receivers of bribes and the like were regarded as open-thieves[87] as they were adept in cheating.

Forgery was strongly condemned and early law givers like Manu and Viṣṇu even prescribed death sentence for preparing spurious charters and documents.[88] In the work of Yājñavalkya and in the *Matsya Purāṇa*, however, we find a lenient attitude as they only prescribed highest fine for interpolation or alteration of a charter.[89] The *Rājataraṅgiṇī* refers to a case of forgery for which the king banished the culprit from the land after confiscating his entire property.[90]

For using false weights and measures fine was generally imposed on the trader. Yājñavalkya prescribed highest amercement for using false balances and measures.[91] Kātyāyana also advocated fines for such cheats.[92] Prevalence of imposition of fine for this offence is also referred to in the charter of Viṣṇusena of sixth century A.D.[93]

For counterfeiture of coins monetary punishment was inflicted. Kauṭilya in a much earlier period prescribed heavy fine not only for manufacture of such coins but for accepting it and passing it off to another person.[94] Yājñavalkya suggested that an examiner of coins who declared good money bad and vice-versa should be compelled to pay the highest penalty.[95] The same punishment is prescribed for those who fabricated coins and used them in their transactions.[96] From the charter of Viṣṇusena we learn that a counterfeiter of coins once detected had not only to pay the prescribed fine but also was forced to pay a religious cess for his offence.[97]

Fines were also prescribed for adulteration. A merchant who concealed the defect of an article which he was selling and mixed bad and good articles together and sold them after having them repaired had to give double the quantity to the purchaser and to pay a fine equal to the value of the article.[98] When clay, skin, precious stones, yarn, iron, wood, bark of a tree or cloth of inferior quality was made to appear as of good quality, the fine imposed should be eight times the price obtained by the sale.[99] Same was the case of those who manufactured

imitation articles and passed them as real. They had to restore the price to the purchaser and to pay double the amount as fine.[100] Goldsmiths detected committing fraud were punished with amputation of limbs.[101] Sellers of prohibited meat were also punished in like manner.[102]

Other deceivers such as fake physicians were punished like thieves.[103] According to Bṛhaspati a physician unacquainted with drugs and spells or ignorant of the nature of a disease accepting fees from the sick should be punished like a thief.[104] Those who gained by means of spells or medicine and those who practised incantations with roots should be banished.[105] Yājñavalkya prescribed first amercement for fraud veterinary physicians, the middlemost for those who treated common people and the highest for those who looked after royalties.[106] *Mitākṣarā* explains the expression *Mithyā* used by Yājñavalkya to imply falsity i.e. a physician ignorant of the science of medicine and yet in order to gain his livelihood, poses as a well qualified one. Hence it is not mere negligence or carelessness but ignorance of medical science.[107] False astrologers and men of religious order as well as jugglers were corporally punished.[103] False witnesses and cheat arbitrators were liable to pay scheduled fines.[109] Yājñavalkya prescribed fine for non-*Brāhmaṇa* offenders and banishment in the case of *Brāhmaṇas*.[110] For knowingly giving false evidence the *Matsya Purāṇa* prescribed heavy fine,[111] but the *Agni Purāṇa* laid down fine and banishment for the *Brāhmaṇas* and fine and corporal punishment for other members of the society.[112] Prescribed punishment for bribery was banishment.[113] According to Kātyāyana a person offering the bribe should not be punished but those who accepted it should be fined and bribed royal officials should be compelled to return the bribe and pay a fine eleven times as much.[114]

Cheating in matrimonial affairs was considered a crime. For giving a defective girl in marriage without informing the bridegroom's party the prescribed punishment was fine.[115] Law givers were, however, conscious of false accusation that might occur occasionally. So they prescribed fine for false accusation and laid special stress on the proof of the charge.[116] Like Kauṭilya[117] the *Matsya* and *Agni Purāṇa*[118] prescribed fine for

concealing bridegroom's defects and the former went even further in nullifying the marriage.

Fraudulent activities were discouraged so much so that even for illegal confinement or restraint fines were prescribed.[119]

Dishonest gamblers were severely punished. According to Yājñavalkya when gambling was carried on secretly without taking royal permission and with false dice and other fraudulent means, the gambler was punishable by banishment and branding.[120] Bṛhaspati also prescribed banishment for false gambling.[121] For using unauthorised dice gamblers were fined and a wreath of dice was usually hung round their necks.[122]

Adultery or unlawful intercourse with women was a condemned offence and punishable by law. According to Yājñavalkya, Nārada and Bṛhaspati when a man had connection with a woman of his own caste a fine of highest degree should be imposed on him and moderate fine for connection with women of lowest caste and capital punishment for illegal connection with women of superior caste were prescribed.[123] For violating an unwilling woman Nārada suggested cutting off of two fingers of the criminal and if the woman happened to be a *Brāhmaṇa* then death and confiscation of entire property was his punishment.[124] Bṛhaspati not only referred to amputation of limb and confiscation of property but also added parading of the criminal on an ass, branding him with insulting marks and banishment.[125] In the *Yaśastilaka campū* we find reference to banishment as a punishment advocated for adultery.[126] Kātyāyana recommended capital punishment for forcibly violating a woman.[127] Daṇḍin records that offenders were arrested and their entire property was confiscated for elopement or courting of others' wives.[128]

Incest was considered the most heinous crime. A mother, mother's sister, mother-in-law, maternal uncle's wife, father's sister, paternal uncle's wife, friend's wife, pupil's wife, sister, sister's friend, daughter-in-law, daughter, spiritual teacher's wife, *Sagotra* relation, one under protection, a queen, a female ascetic, a nurse, an honest woman and a female of the highest caste were the persons with whom illegal connection was absolutely forbidden. For violating any one of them excision of the genital

organ was prescribed.[129] For adultery with low caste woman, however, only monetary punishment was prescribed.[130] Inscriptions also refer to fines imposed for ten offences which include adultery.[131]

Though intercourse with wanton women, prostitute, female slaves etc. was permitted,[132] there were occasions when they should not be visited. Thus, one could not approach a kept mistress, a maid servant or a slave belonging to another person and for committing adultery with any one of them the offender had to pay a fine.[133] Like Kauṭilya, Yājñavalkya prescribed fine for forcible intercourse with even an unwilling prostitute[134] and the amount of the fine was considerably raised during the time of Yājñavalkya. Imposition of these punishments provided safeguards for the unprotected females.

For adultery with a female ascetic Yājñavalkya prescribed monetary punishment but Nārada was severe enough to impose excision of the organ as a sufficient atonement for such offence.[135] Immoral attitude of the people of the religious order was least tolerated by society. Hiuen-tsang informs that king Harṣavardhana used to convene a quinquennial assembly of the religious orders and those brethren whose immoral conduct was notorious were banished from the country.[136] I-tsing also refers to banishment as the just punishment for immorality on the part of monastic personnel.[137]

Adulterous females were also not exempt from punishment. An unwilling woman, however, was not punished but had to undergo a few rigorous penances to get rid of the sin in case she had illegal relation with men of equal caste. But Bṛhaspati pointed out that for intercourse with a man of the lowest order even an unwilling woman had to be abandoned and put to death.[138] How far capital punishment was imposed on women is not clearly known. Yama prescribed abandonment instead of disfigurement and death sentence even when women were guilty of adultery.[139] Kātyāyana on the other hand referred to disfigurement as the substitute for death sentence.[140] Bṛhaspati was much more staunch in this respect and according to him female adulterers were to be punished more severely. Though half of her punishment should be inflicted on the man, a female who instigated the man should either have her nose, lips and

ears cut and be paraded in the street and finally plunged into water or be torn to pieces by dogs.[141]

Historical records support the *Smṛti* rules. According to an inscription of the Western Cālukya King Āhavamalla dated 992 A D. an adulteress had to suffer the amputation of her nose while the adulterer was put to death.[142] The Arab writer Abu Zaid (916 A.D.) recorded that in the case of adultery both the man and woman were put to death, but if the woman was forced against her will, the man alone was punished that way.[143] Alberuni, however, noticed that an adulteress was generally driven out of the house of her husband and banished.[144]

For abuse or defamation generally fiscal punishment was imposed from a very early period.[145] Even from the contemporary inscriptions it is gathered that fines were inflicted for four offences of speech.[146] It is to be noted that for offences of this nature scale of punishment was determined according to the superiority or inferiority of the caste or *Varṇa*. Special favour was given to the *Brāhmaṇas* as they were the apex of the social pyramid. Thus a *Brāhmaṇa* had to pay 50 *Paṇas* for abusing a man of *Kṣatriya* caste, 25 *Paṇas* for a *Vaiśya* and 12 *Paṇas* for a *Śūdra*.[147] But when a *Kṣatriya* reviled a *Brahmaṇa* he had to pay 100 *Paṇas* as a fine, a *Vaiśya* 150 to 200, and a *Śūdra* received corporal punishment for the same offence.[148] Though for abusing a virtuous *Śūdra* a *Brāhmaṇa* had to pay a nominal fine, it was considered no offence to abuse a *Śūdra* devoid of virtue.[149] Nārada declared that a *Brāhmaṇa* and a king were exempt from censure.[150] So, for censuring a king the punishment was cutting of the tongue and confiscation of entire property,[151] while for censuring a *Brāhmaṇa*, men of other castes were to be heavily fined and the *Śūdras* had to suffer fiscal as well as corporal punishment.[152] For insulting members of the upper classes a *Śūdra* had his tongue cut out.[153] For pronouncing terms of contempt a red hot iron rod was thrust into his mouth,[154] and for advising a *Brāhmaṇa* about his duty hot oil was poured into his mouth and ears.[155] All these rules are no doubt very severe and out of proportion from modern viewpoint but they were probably introduced by the men of the then privileged order to glorify their prestige and position.

The offence of assault was also generally met with monetary punishment and the gradation of fine was modified, reduced or raised in conformity with caste and qualities of a man.[156] Kātyāyana pointed out that like abuse, punishment for assault should also be determined according to castes. Higher punishment should be inflicted on the attacker if he was of lower caste than the attacked and vice versa.[157] Explaining Manu's verse, Medhātithi pointed out that when a hurt was inflicted on men or animals the attendant circumstances (like intentional motive or carelessness) had to be taken into account in apportioning of penalties.[158] According to Bṛhaspati, for mild injuries, fine of first degree should be enforced, while moderate fine should be imposed for using weapon and causing mediocre wound and for a serious injury highest fine was to be ordained.[159] Moreover, he prescribed that one who injured a man had to pay, over and above the fine, the expense of medical treatment.[160] Kātyāyana suggested the highest amercement for cutting off the ear, the lip, the nose, the foot, the eye, the tongue, the penis or the hand and the middle amercement for causing injury or wound.[161] Nārada on the other hand prescribed banishment for breaking a bone.[162] When two persons injured each other they should be equally punished, but larger fine was allotted to first aggressor and habitual mischief-maker.[163] When a man attacked another with a dangerous weapon, he was regarded as a criminal and liable to punishment even though he might have been the first to be hurt by the other party.[164] If a man threw into another man's house such substances as caused pain and suffering (such as thorns) he was fined 16 *Paṇas*. If he threw such things as were a danger to life (such as snakes) he was fined the middle amercement.[165]

A man of the lower caste was always punished corporally.[166] Nārada stated that with whatever limb a man of low caste injured a *Brāhmaṇa*, that very limb should be amputated.[167] If through arrogance he spit on a superior his lips should be amputated.[168] For pulling by the hair, seizing by feet, beard, neck, or scrotum, his hands should be cut off.[169] When injury was caused to a limb or an organ, the assailant should be fined and should also be made to pay compensation and the expenses

for recovery as also anything that he might have taken away in the quarrel.[170] Not only physical injury but injury to property also fell under the group of assault. Yājñavalkya prescribed fine for causing injury to animals, trees, or damaging other property.[171] Fines were imposed for cruelty to animals.[172] He who employed a tired, hungry or thirsty mule, bullock or buffalo or camel for drawing or carrying at an improper time should be fined the first amercement.[173] Kātyāyana suggested fines for injuring trees, shrubs and creepers[174] while Bṛhaspati pointed out that one who destroyed implements of husbandry, flowers, roots and fruit should be fined.[175] But if a man committed the offence of assault due to excessive alcoholic drinks or through mistake he should be exempted.[176]

Of various acts of *Sāhasa* or violence, man-slaughter was considered the worst and punishment was also severe.[177] Nārada declared that taking human life through poison, weapons or other means was *Sāhasa* of the highest degree and should be punished accordingly.[178] Bṛhaspati prescribes death sentence for murderers. Both notorious murderers and secret assassins should be put to death by various modes of execution after confiscating their property.[179] Murderers were never tolerated in society.[180] Even in the work of Kauṭilya we find mention of sentence to death by various means for murder.[181] The same attitude continued even during the period under consideration. From Kālidāsa it is gathered that murder was legally punishable by death.[182] When a murder was committed by conspiracy, no one was spared from the rod of the king. Thus, when several persons killed a single individual, the responsibility for murder should be charged to him who gave the fatal blow and should be inflicted with due punishment, while his associates should also be adequately punished though that would only be half the punishment of the real criminal.[183] Kātyāyana also pointed out that the associates and inciters who helped the actual miscreant in different ways were all to be considered perpetrators of the crime and be punished according to the gravity of their guilt.[184] Yājñavalkya prescribed special punishment to inciters and helpers.[185] The *Kathāsaritsāgara* records that criminals were hired for committing murder on handsome remuneration.[186]

Law givers specifically exempted the *Brāhmaṇas* from capital punishment and advocated banishment as a substitute.[187] However, capital punishment for the *Brāhmaṇas* on murder charge was not totally unknown. The *Mṛcchakaṭika* records that Cārudatta, a *Brāhmaṇa* convicted of murder of Vasantasena, a courtesan was sentenced to death.[188] Even Kātyāyana, though he, in general, held that the *Brāhmaṇas* were not to be given capital punishment,[189] clearly declared that the *Brāhmaṇas* guilty of causing abortion, killing a *Brāhmaṇa* woman with a sharp weapon or murder of a chaste lady, should be condemned to death.[190] From the *Rājataraṅgiṇī* of Kalhaṇa, however, it is learnt that *Brāhmaṇa* assassins during the time of King Candrāpīḍa (713-720 A.D.) were exempted from capital punishment [191] The *Matsya Purāṇa* prescribed banishment and branding for a *Brāhmaṇa* guilty of serious offences.[192] Medhātithi went to the extreme when he pointed out that not only corporal punishment but monetary punishment should also be avoided.[193] Sumantu quoted by Vijñāneśvara prohibited slaying of a *Brāhmaṇa* assailant or *Ātatāyīn*.[194] Alberuni noticed that the *Brāhmaṇas* were immune to death sentence. They could only be banished and their property confiscated and those guilty of stealing precious and costly articles, were either blinded or had their right hand and left foot cut off.[195]

It was also the general rule to exempt female criminals from capital punishment. Kātyāyana stated that in cases of all offences women were to suffer half of the fine in money which were prescribed for male offenders, and when capital punishment was inflicted on a male, amputation of a limb would be the corresponding punishment for a female.[196] For murder, however, female criminals were equally severely punished. According to Yājñavalkya an extremely wicked female who caused abortion or murdered a man should be drowned with a stone tied round her neck provided she was not pregnant at that time.[197] Moreover, a woman guilty of poisoning, incendiarism, murder of her husband, elders and child should be put to death by being gored by the horns of bulls after having mutilated her nose, lips, ears and hands.[198] How far this rule was enforced is not clear because Yājñavalkya elsewhere declared that for heinous offences like adultery and

murder a female should rather be abandoned.[199] Daṇḍin narrates that a lady named Dhūminī had attempted to kill her husband but failed. Her wicked nature was revealed and the lady was punished with disfigurement.[200]

State officials enjoying dignified social position were not exempted from punishment if found guilty. For molesting the subjects royal officials were banished after confiscation of their whole property.[201] An official who disturbed others in the discharge of his duties was also punished with confiscation.[202] Ministers and judges were punished with confiscation for misuse of power and authority.[203] Malpractice of royal officials was not rare. Kṣemendra in his satirical work reveals the character of *Niyogins* who had to keep account of villages and districts, had to inspect roads and try civil and criminal cases. These officials oppressed the poor villagers and used to inflict heavy punishment for petty offences.[204] They would even neglect the orders of superior authority. Under them were the *Grāma Divīras* who could forge signatures, wipe off letters and insert new ones.[205] Equally oppressive were the *Kāyasthas* or the scribes in the revenue department.[206] Yājña-valkya advised the king to protect the subjects from the harassment in the hands of different rogues and specially of the *Kāyasthas*.[207] *Mitākṣarā* pointed out that they were very cunning.[208] They would often accept bribe and for bribery banishment and fine were the punishments.[209] If a jailor or the person entrusted with the duty of punishing offenders allowed a convict to escape he was punished with the penalty to which the concerned criminal had been sentenced.[210] If a person caused the release of an under-trial prisoner he was punished with the highest amercement.[211] Yājñavalkya stated that a person who rescued a prisoner should be impaled.[212] The *Matsya Purāṇa* prescribed double the punishment of the convict for the man who set free a convict kept in prison.[213] Punishments for State officials thus on the one hand protected common people while on the other put restraint to their growing power and privileges.

Political crimes were suppressed ruthlessly. The king was expected to be obeyed whether he was capable or not. According to Nārada disobedience would bring on death.[214]

For offences against royal commandments monetary and corporal punishment were proclaimed.[215] For censuring a dutiful king Nārada prescribed confiscation of entire property and amputation of tongue.[216] Even for assailing a wicked king he suggested death sentence by fastening on a stake and burning in fire[217] because in such a case the criminal was considered more guilty than one who had committed the crime of *Brāhmaṇa* murder (*Brahmahatyā*) a hundred times.[218] Kātyāyana prescribed corporal punishment for indulging in royal sports, adopting royal occupation, speaking distasteful things against him and theft of royal wealth.[219]

Kauṭilya had enjoined that any person who aimed at the kingdom, who forced entrance into the royal harem, who instigated wild tribes and enemies against the State, created disaffection in forts, states or in the army should be put to death even if he was a *Brāhmaṇa*.[220] Kāmandaka, following the ideas of Kauṭilya, pointed out that the sentence of death might be avoided even for the gravest offences, but for treason there was no other alternative than death.[221] People who proved harmful to the kingdom should be killed without any delay.[222] Those who were hated by the people should be punished with public execution while those whose public execution would arouse public indignation should be killed secretly.[223] In the *Mudrārākṣasa* we find reference to sentence of death pronounced for political crimes.[224] It appears that capital punishment was sometimes commuted to banishment even for political crimes. Hiuen-tsang's account chronicles that a person made an unsuccessful attempt to murder King Harṣavardhana. All dignitaries demanded that the culprit should be instantly killed. But King Harṣa inquired into the matter and having discovered a conspiracy, punished the chief plotter and banished others out of the Indian front.[225] Fa-hien on the other hand records that even for repeated attempts at rebellion amputation of right hand was prescribed as there was no system of decapitation.[226] Mutilation of limbs as a substitute punishment for treason was not unknown. The *Daśakumāracarita* relates that one *Brāhmaṇa* minister Kāmapāla had his eyes scooped out for committing treason. He clandestinely poisoned the king and his heir-apparent and plotted to murder another monarch named

Siṁhaghoṣa. The secret plot was revealed and the judge decreed deprivation of vision as the legal penalty for this wicked *Brāhmaṇa* counsellor.[227] The *Mṛcchakaṭika* informs that life imprisonment was also in vogue for political offences.[228] Condemned criminals were brutally treated and taken away through the common streets with their arms bound from behind when proclamations were made in public.[229] This humiliation must have had some effect on people and naturally this was intended to make people conscious of the ultimate fate of such criminals.

Crimes which were committed due to lack of civic sense were generally punished with fines. Following the rules of early law givers the legal writers of the period prescribed monetary punishment for obstructing the public road in various ways and aimed at cleanliness.[230] Misuse of stored water of pond and polluting holy water was also punished with imposition of fines.[231] The *Agni Purāṇa*, however, recommended death penalty for polluting ponds and temples.[232] The habit of blockading drainage and waterways was equally harmful and was punished accordingly.[233] Yājñavalkya prescribed even capital punishment for destruction of an embankment.[234] Bṛhaspati, on the other hand, advocated monetary punishment for such offences.[235]

Punishments were also prescribed for various religious crimes. Manu suggested death sentence for destruction of temples.[236] The same idea was repeated in the *Matsya Purāṇa*.[237] For destruction of idol both imposed a fine of 500 *Paṇas* along with the responsibility of repairing and restoring it,[238] but Kātyāyana prescribed monetary punishment of 250 *Paṇas* for one who steals or burns the idols or destroys temples.[239] Śaṅkha prescribed a fine for breaking idols and death penalty for polluting temples.[241] For abuse of gods Yājñavalkya and the *Matsya Purāṇa* prescribed highest fine.[242] Though authors of the law varied in imposition of punishment and fines they unanimously emphasised the need of maintaining sanctity of idols and temples.

It is worthwhile to penetrate deeper into the nature of different punishments prevalent during the period under review. Monetary punishments varied from petty fines to the confisca-

tion of entire property.[243] Law givers differed in their opinion regarding the amount of lowest, mediocre and highest fines. According to Manu amounts of first, second and highest amercements were 250, 500 and 1000 *Paṇas* respectively.[244] The same rate was fixed by the *Agni Purāṇa*.[245] Yājñavalkya, however, increased the rate to 270, 540 and 1080 *Paṇas*.[246] Nārada pointed out that for *Sāhasa* of the first degree the minimum amount of fine to be inflicted was one hundred *Paṇas*, whereas for the *Sāhasa* of the mediocre degree a fine no less than five hundred should be imposed. For *Sāhasa* of the highest degree a fine amounting to no less than a thousand *Paṇas* was suggested.[247] Bṛhaspati made gradation of fines subject to modification, and it could be reduced or raised according to the nature of crime and position of the criminal.[248] Confiscation of entire property was permitted for some heinous crimes.[249] Nārada, however, alarmed that while confiscating the entire property of the criminal a king should not deprive him of the implements by which he earned his livelihood e.g., the weapons of soldiers, tools of artisans, ornaments of public women, musical and other instruments of professional artists.[250] The idea seems to be quite humane as it gave the criminals a chance to earn their money afresh instead of being completely ruined in poverty. Fiscal punishments helped to replenish the royal exchequer and fines were considered a great source of revenue.[251]

Among the physical punishments for any offence of small nature whipping with a cord or bamboo stick on the back was prescribed.[252]

Mutilation of limbs appears to be the most common practice. According to Manu and Nārada eight sites could be selected for infliction, such as privy parts, the abdomen, the tongue, the two hands, the two feet, the eyes, the nose and the two ears.[253] Bṛhaspati indicated fourteen such sites viz. both hands, feet, the nose, the male organ, the eye, the tongue, both ears, the neck, one half of the feet, the thumb and index, the forehead, the lips, the hind part and the hips.[254] Though this type of punishment would appear savage from modern point of view, amputation of limbs was considered a lenient punishment in the then society.[255]

Imprisonment was another mode of punishment prevalent during the period. Hiuen-tsang observed that imprisonment for life was practised.[256] Yama suggested that instead of corporal punishment a *Brāhmaṇa* criminal should always be kept in prison and the king should compel him to labour.[257] The literature of this period provides ample references to prisons.[258] Prisons were generally located in an underground dungeon or in an out of the way place[259] and were properly walled.[260] Prison houses were well-protected by guards[261] and jailors.[262] From the *Daśakumāracarita* we find that occasionally jailors used to inherit the job from their parents.[263] Even female criminals had their feet tied and put in prison.[264] The *Karpūramañjarī* refers to female guards of prison house.[265] Iron fetters were generally used to bind the feet of the culprit.[266] Wooden handcuff was also known.[266a] In the *Mṛcchakaṭika* there is a reference to a prisoner who escaped from his dungeon after killing the guard and breaking his fetters.[267] Sudden escape of a prisoner usually caused great uproar in the city.[268] From the *Harṣacarita* it appears that the condition of the prisoners was far from satisfactory. They bore haggard looks with long beards and their bodies looked dark due to dirt.[269] The life of Hiuen-tsang records that prisoners generally received harsh treatment. They were not allowed to shave and had hairy faces and matted beards.[270] There were, however, occasions when prisoners were released. Kālidāsa records that when the constellation on which a king was born was in evil aspect, astrologers advised release of all the prisoners.[271] At the time of royal coronation also prisoners were released.[272] Bāṇa informs that not only coronation but birth of a royal son was also another occasion for the release of prisoners.[273] The *Bṛhatsaṁhitā* adds that release of prisoners could even be ordered when the king took the *Puṣyasnāna* (an auspicious bath).[274] The practice of releasing prisoners on special occasions continued even in the Mughal period. On the occasion of the celebration of recovery from illness of the favourite princess Begam Sahib, Shah Jahan ordered the release of his prisoners in 1638.[275]

Banishment was generally inflicted on *Brāhmaṇa* offenders,[276] as they were exempted from corporal punishment.

Hiuen-tsang reports that for treason, disloyal and unfilial conduct or for immoral behaviour an offender was banished to another country or into wilderness.[277] Yājñavalkya prescribed banishment for officers accepting bribes, *Brāhmaṇas* giving false evidence, for transgressing the rules and regulations of corporate organisations, for playing with false dice and other fraudulent activities.[278] Kalhaṇa states that for forgery banishment was usually practised.[279] By banishment thus the state wanted to get rid of harmful members of the society.

Branding was a humiliating punishment usually inflicted on *Brāhmaṇa* criminals.[280] A *Brāhmaṇa* would be branded for four offences. For violating the bed of a *Guru* the brand was of a female part; a liquor sign for drinking excessive spirituous liquor; a dog's foot for theft;a headless man, for slaying-another *Brāhmaṇa*.[281] Yājñavalkya prescribed branding for a gambler playing with a false dice and adulterers of three higher *Varṇas* violating a very low and degraded woman.[282] Branding also finds mention in the *Rājataraṅgiṇī*.[283] Besides branding, shaving of head and parading on an ass were also practised as humiliating punishments from a very early time.[284] These practices were prevalent even during the Moghul rule.[285] The psychology behind these acts was to mark the condemned out from the rest.

Last, though not least in the list of punishment was death sentence, absolutely reserved for gravest offence. Preservation was the ultimate motive of the ruler so loss of life in any form was neither desirable nor much encouraged. Kāmandaka emphasised that death sentence should be avoided even for severe offences except for the crime of subverting a state.[287] In spite of this concept capital punishment for other heinous crimes was not unknown. There were, however, different ways by which death sentence could be executed. Kāmandaka subdivided capital punishment into two varieties, namely the public and secret. The public execution was conducted when the criminal was hated by the people or was an enemy of the state but secret execution was intended for those whose public execution would arouse discontent and anger of the people. According to Kāmandaka secret execution could be carried out with the help of poison, secret appliances, weapons or even

ointments.[288]

Contemporary works have ample references to death by impalement.[289] After impalement remains of the body of the criminal were thrown away to be devoured by vultures and dogs.[290]

Daṇḍin refers to one of the savage ways of trampling to death by elephants.[291] He also makes mention of death by torture. The jailor Kaṇṭaka on one occasion asked a thief to restore his stealings to the citizens, failing which he would suffer the eighteen tortures one after another till death.[292] In the Junāgaḍh copper plate inscription there is mention of over-torture.[293] Kalhaṇa records torture as a punishment for treason.[294] Bhīmagupta was put to death by various tortures.[295] Somadeva also relates the prevalence of death by torture.[295a]

A condemned criminal was also burnt to death after having fastened him on a stake.[296] Yājñavalkya recommended death sentence by burning.[297]

Nārada referred to the inhuman practice of pouring hot oil into the mouth and ears and thrusting red-hot iron into the mouth of a criminal sentenced to death.[298]

Death by drowning was also in vogue. Bṛhaspati made mention of adulterous women drowned to death for their offence.[299] Yājñavalkya also referred to wicked females drowned to death with stones tied round their necks.[300] The *Matsya Purāṇa* suggested death sentence by drowning for destroying the course of water in pond.[301] Kalhaṇa records that the valiant Eramaṇṭaka was thrown into the Vitastā with a large stone bound to his neck, a punishment he received from tyrant queen Diddā for his false conduct.[302]

Extremely wicked female criminals were also put to death by being gored by the horns of bulls.[303]

Thieves were even put to death by severe beating.[304]

Capital punishment was also carried out in a common manner by beheading the criminal in an execution ground.[305]

It will not be irrelevant to discuss the dress of criminals sentenced to death. From the contemporary literature it is gathered that red garments were generally given to them.[306] Moreover, the head of a criminal about to be executed was decorated with a garland[307] and all his limbs were smeared

with red sandalwood paste[308] so that he could be distinguished by the public from others. From a vivid description of Daṇḍin it appears that public execution was witnessed by huge crowds who used to seek the highest spots they could find to get a clear view of the gruesome sight.[309]

It, however, needs be noted that before the final sentence certain factors were carefully considered by the early Indian law givers. So only those who committed crimes intentionally or due to criminal negligence were punished. But for unintentional offences punishments were milder compared to that for intentional crimes.[310] Yājñavalkya clarified the point that for unintentional accident a man was not responsible.[311] According to him if a keeper or the owner of cattle unwillingly allowed them to graze on a field situated at the outskirts of a highway or a village or a plot of land covered with grass he committed no offence. But for the same intentional act he was to be punished like a thief.[312] In the same manner Bṛhaspati also laid special emphasis on intention in punishing an offender. According to him a person who committed offences intentionally should only be punished.[313] This at once speaks highly of the importance given to intention in the assessment of the gravity of an offence.

Ignorance was also a factor that was counted before inflicting any punishment. Though Manu did not specifically mention knowledge as a condition for punishment, Kulluka interpreted it that way.[314] Kauṭilya, Yājñavalkya, Nārada and the *Matsya* and *Agni Purāṇa* held the same opinion.[315]

Confession played a significant role in mitigating the gravity of punishment.[316] As Nārada held, the perpetrator of a wrong act or of a crime should be let off with one half the prescribed punishment due for his offence provided he admitted the charge of his own accord.[317] On the other hand, if he denied the guilt on being examined in a court of justice and was convicted afterwards by means of an ordeal or other modes of proof, he would suffer a heavier punishment.[318]

Insanity, age, physical and other disabilities were also considered before any infliction. Manu prescribed simple whipping for insane, women, infants, the poor and the siek.[319] The *Matsya Purāṇa* granted concessions for the old and invalid,

pregnant women and children.[320] Yājñavalkya in the same way repeated that before inflicting any punishment strength, age, time and place should be taken into consideration.[321] Kauṭilya recommended half the punishment for crimes committed under insanity or intoxication,[322] while Yājñavalkya held that it incurred no punishment at all.[323] Children were always exempted from severities. The *Mahābhārata* emphasised that until a boy reached fourteen years he should not be considered a sinner even if he committed a sin.[324] Kauṭilya also exempted children totally,[325] but Manu prescribed rebuke and whipping[326] which were only corrective or reformatory measures reserved for juvenile delinquents.

Footnotes

1. *Ency. Soc. Sc* , XI-XII, p. 712.
2. *A.B.O.R.I.*, VIII, 1920, p. 72.
3. *Gaut.*, XI. 31.
4. *R.V.*, VII. 28. 4, X. 8.
5. *Mahā., Rājadharmānuśāsana parva* (*Śānti*), 68.
6. *Manu.*, VIII. 122.
7. Ibid., VII. 14, 20.
8. *Viṣ* , III. 36-37.
9. Ibid., III 95.
10. *A S.*, I. 4. 13.
11. *Raghu.*, I. 25.
12. *Mahā., Śānti*, 33.
13. *Manu.*, VII. 18, *Yāj.*, I. 354.
14. *Nār.*, App. 50.
15. Ibid., App. 50.
16. Ibid., XVIII. 18.
17. *Kāt.*, quoted in *Rājanīti-prakāśa*, p. 30.
18. *Bṛhas.*, XXVII. 26.
19. *Manu.*, VII. 16.
20. *A.S.*, I. 4.
21. *Kām.*, II. 37.
22. *N.P.*, 839.
23. *Nār.*, App. 38, *Yāj.*, I. 368, *A.S.*, 4. 10, *Manu.*, VII. 16.
24. *Yāj.*, II. 269-72.
25. *Manu.*, VIII. 129, *Yāj.*, I. 367, *Bṛhas.*, XXVII. 5.
26. *Bṛhas.*, XXVII. 6.
27. *Nār.*, App. 53.
28. *Kām.*, XVIII.
29. *Kāt.*, 490-93, 806 ff.
30. *Bṛhas.*, XXVII. 5, 7.
31. *Kād.* Kale, p. 6.
32. *H.C.* C.T., p. 65.
33. Ibid., p. 196.
34. *Manu.*, VIII. 335.
35. *Yāj.*, I. 358.
36. Ibid., I. 358. *etacca Mātāpitrādi vyatirekeṇa.*
37. *Bṛhas.*, XXVII. 7.
38. *Manu.*, VIII. 336.
39. *A.S.*, 4. 13.
40. *Yāj.*, II. 307.
41. *Nār.*, XV-XVI. 20.
42. Legge, Op. Cit., p. 43.
43. Watters, I, p. 172.
44. Takakusu, p. 63.
45. *Nār.*, App. 22-24.
46. *C.I.I.*, III, p. 124.
47. *Bṛhas.*, XXI. 19-20.

48. *Nār.*, XVIII. 37.
49. *C.I.I.*, III, p. 124.
50. *Yāj.*, III. 43.
51. *Nār.*, App. 25.
52. *Nār.*, App. 26, *Bṛhas.*, XXI. 21, *Agni*. 227. 35.
53. *Nār.*, App. 27, *Bṛhas.*, XXI. 28.
54. *Śak.*, VI, *Vik.*, V.1, *Agni.*, 227. 36.
55. *Manu* , VIII. 323.
56. *A S.*, I. 2. 13.
57. *Nār.*, App. 29.
58. Ibid., App. 28.
59. Ibid., App. 33.
60. *Bṛhas* , XXI. 18, 27-28, *Agni.*, 227. 36.
61. *Bṛhas.*, XXI. 17.
62. *D C.* Ryder, p. 93.
63. Ibid , p. 128.
64. *Agni.*, 227. 53.
65. *Nār.*, App. 32, *Yāj.*, II. 270.
66. *Yāj* , II. 274.
67. Ibid., II. 274.
68. *Manu.*, IX. 277, *Viṣ.*, V. 136.
69. *Nār.*, App. 7.
70. *Bṛhas.*, XXII. 6.
71. *Nār.*, App. 34.
72. Ibid., XIV. 2.
73. Ibid., XIV. 21.
74. Ibid., XIV. 7-8.
75. Ibid., App. 51-52.
76. Ibid., App. 36, *Bṛhas.*, XXVII. 11.
77. *Bṛhas.*, XXVII. 12.
78. *Kāt.*, 485.
79. *Bṛhas.*, XXVII. 11.
80. *Nār.*, App. 44.
81. *Bṛhas.*, XXII. 22.
82. *Kāt.*, 824-825.
83. *Yāj.*, II. 276.
84. *Nār.*, App. 13-14, *Kāt.*, 827, *Matsya.*, 227. 165-70.
85. *Kāt* , quoted in *Vivādaratṇākara*, p. 340.
86. *Manu.*, IX. 271-78.
87. *Nār.*, App. 2, *Bṛhas.*, XXII. 3.
88. *Manu.*, IX. 232, *Viṣ.*, V. 9-10.
89. *Yāj.*, II. 295, *Matsya.*, 227. 202.
90. *R.T.*, VI. 29. 41.
91. *Yāj.*, II. 240.
92. *Kāt.*, 810 ff.
93. *E.I* , XXX, pp. 163-81, lines 10-11.
94. *A.S.*, 4. 2-3.
95. *Yāj.*, II. 241.
96. Ibid , II. 241.
97. *E I.*, XXX, pp. 163-81.
98. *Bṛhaṣ.*, XXII. 7.
99. *Yāj.*, II. 246.
100. *Bṛhas.*, XXII. 14.
101. *Yāj.*, II. 297, *Matsya.*, 227. 184-85.
102. *Yāj.*, II. 297.
103. *Bṛhas.*, XXII. 8.
104. Ibid., XXII. 8.
105. Ibid., XXII. 16.
106. *Yāj.*, II. 242.
107. Ibid., II. 242.
108. *Bṛhas.*, XXII. 11-12, 14.
109. Ibid., XXII. 15.
110. *Yāj.*, II. 81-82.
111. *Matsya.*, 227. 199.
112. *Agni.*, 162. 1-17.
113. *Bṛhas.*, XXII. 10, *Yāj.*, I.339.
114. *Kāt.*, 650-51.
115. *Manu.*, VIII. 205, 225, *A.S.*, 3. 15, *Matsya.*, 227. 14, *Nār.*, XII. 33.
116. *Manu.*, VIII. 225, *Viṣ.*, V. 47, *Nār.*, XII. 34.
117. *A.S.*, 3. 15.
118. *Matsya.*, 227.
119. *Yāj.*, II. 243, *Nār.*, I. 51, *Bṛhaspati* and *Kātyāyana* quoted in *Vyavaharamayūkha.*
120. *Yāj.*, II. 202.
121. *Bṛhas.*, XXVI. 5.
122. *Nār.*, XVII 6, 8.
123. *Yāj,,* II. 286, *Nār.*, XII. 70, *Bṛhas.*, XXIII. 12.
124. *Nār.*, XII 71.
125. *Bṛhas.*, XXIII. 10-11.

126. *Y.C.*, VII. 31.
127. *Kāt.*, 830.
128. *D.C.* Ryder, p. 176.
129. *Nār.*, XII. 73-75, *Yāj.*, III. 231-33, *Matsya.*, 227. 139-41.
130. *Nār.*, XII. 76.
131. *C.I.I.*, III, p. 189.
132. *Nār.*, XII. 78.
133. Ibid., XII. 78, *Yāj.*, II. 290.
134. *A.S.*, 4. 13, *Yāj.*, II. 291.
135. *Yāj.*, II. 293, *Nār.*, XII. 74.
136. Watters, I, p. 344.
137. Takakusu, p. 63.
138. *Bṛhas.*, XXIII. 13-14.
139. *Yama* quoted in *Sm. Can.*, p. 246.
140. *Kāt.*, 487.
141. *Bṛhas.*, XXIII. 16.
142. *S.I.I.*, IX, No. 77.
143. *The Age of Imperial Kanauj*, p. 377.
144. Sachau, II, p. 162.
145. *Manu.*, VIII. 267, *A.S.*, III. 18, *Viṣ.*, V. 35.
146. *C.I I.*, III, pp. 189, 218.
147. *Nār.*, XV-XVI. 16, *Bṛhas.*, XX. 7.
148. *Nār.*, XV-XVI. 18, *Bṛhas.*, XXI. 15.
149. *Bṛhas.*, XX. 8.
150. *Nār.*, XV-XVI. 20.
151. Ibid., XV-XVI. 30.
152. *Bṛhas.*, XX. 11-12, XXI. 15.
153. *Nār.*, XV-XVI. 22.
154. Ibid., XV-XVI. 23.
155. Ibid., XV-XVI. 24.
156. *Bṛhas.*, XX. 15.
157. *Kāt.*, 786.
158. *Manu.*, VIII. 286.
159. *Bṛhas*, XXI. 2, 5, 6, 10.
160. Ibid., XXI. 10, *Yāj.*, II. 222, *Kāt.*, 787.
161. *H.D.S.*, III, p. 515.
162. *Nār.*, XV-XVI. 29.
163. *Bṛhas.*, XXI. 13.
164. *Kāt.*, quoted in the *Vivāda-ratṇākara*, p. 276.
165. *Yāj.*, II. 224.
166. *Bṛhas.*, XXI. 15.
167. *Nār.*, XV-XVI. 25.
168. Ibid., XV-XVI. 27.
169. Ibid., XV-XVI. 28.
170. *Kāt.*, in *Vivādaratṇākara*, p. 271.
171. *Yāj.*, II. 212, 214, 223, 225-26.
172. *Kāt.*, in *Vivādaratṇākara*, p. 279.
173. Ibid., p. 280.
174. *Kāt.*, 793.
175. *Bṛhas.*, XXII. 25.
176. *Yāj.*, II. 214.
177. *Bṛhas.*, XXII. 29.
178. *Nār.*, XIV. 6-8.
179. *Bṛhas.*, XXII. 29-30.
180. *Manu.*, VIII. 244.
181. *A.S.*, 4. 11.
182. *Raghu.*, IX. 81.
183. *Bṛhas.*, XXII. 30-31.
184. *Kāt.*, 832-34.
185. *Yāj.*, II. 231.
186. *K.S.S.*, *Taraṅga* 3, Origin of Pataliputra.
187. *Manu.*, IX. 241, *Nār.*, App. 41-42, *Bṛhas.*, XXVII. 11, *Kāt.*, 482-89, *Matsya*, 227. 163 f.
188. *Mṛccha.*, IX.
189. *Kāt.*, 482-89.
190. Ibid., 806.
191. *R.T.*, IV. 96.
192. *Matsya.*, 227. 163 f.
193. *Manu.*, VIII. 24.
194. *Yāj*, II. 21.
195. Sachau, I, p. 162.
196. *Kāt.*, 487.
197. *Yāj.*, II. 278.
198. Ibid., II. 279, *Matsya.*, 227. 200.
199. *Yāj*, I. 72.
200. *D.C.* Ryder, pp. 161-68.
201. *Agni.*, 227.47.
202. Ibid., 227. 47.
203. Ibid., 227. 49.
204. *Narmamālā*, I. 111-112.

205. Ibid., I. 129.
206. *Yāj.*, I. 322, *R.T.*, 175 ff.
207. *Yāj.*, I. 322.
208. Ibid., I. 322.
209. *Bṛhas.*, XXII. 10, *Kāt.*, 650-51.
210. *Agni.*, 162. 58-66.
211. *Yāj.*, II. 243.
212. Ibid , II. 273.
213. *Matsya.*, 227. 210.
214. *Nār.*, XVIII. 32.
215. Ibid , XVIII. 13.
216. Ibid., XV-XVI. 30.
217. Ibid., XV-XVI. 32.
218. Ibid., XV-XVI. 31.
219. *Kāt.*, 953-956.
220. *A.S.*, 4. 11.
221. *Kām.*, XIV. 16.
222. Ibid., IX. 9-10.
223. Ibid., XVIII.
224. *Mudrā.*, VII.
225. Watters, I, p. 172, Beal, I, pp. 220-21.
226. Legge, p. 43.
227. *D.C.* Ryder, pp. 135-36.
228. *Mṛccha.*, VI.
229. *D.C.* Ryder, pp. 135-36.
230. *Nār.*, XI. 15-16, *Bṛhas.*, XIX. 27-28, *Kāt.*, 756.
231. *Matsya.*, 227. 173-74, *Kāt.*, 758-59.
232. *Agni.*, 162.
233. *Bṛhas.*, XIX. 25, *Kāt.*, 752-53.
234. *Yāj.*, II. 278-79.
235. *Bṛhas.*, XXII. 25.
236. *Manu.*, IX. 280.
237. *Matsya.*, 227. 172.
238. *Manu.*. IX. 283, *Matsya.*, 227. 176-79.
239. *Kāt.*, quoted in *Vivādacintāmaṇi*, Section Robbery and Violence.
240. Ibid., Robbery and Violence.
241. *Agni.*, 162.
242. *Yāj.*, II. 211, *Matsya.*, 227. 188.
243. *Nār.*, App. 56.
244. *Manu.*, VIII. 138.
245. *Agni.*, 227. 4.
246. *Yāj.*, I. 366.
247. *Nār.*, XIV. 7-8.
248. *Bṛhas.*, XX. 15.
249. *Nār.*, *Parikīrṇaka* 10-11, *Bṛhas.*, XXIII. 11, *Kāt.*, 830.
250. *Nār.*, *Parikirṇaka* 10-11.
251. Beni Prasad, *The State in Ancient India*, Allahabad, 1928, p. 303.
252. *Agni.*, 162.
253. *Manu.*, VIII. 124-25, *Nār.*, App. 36-37.
254. *Bṛhas.*, XXVII. 9-10.
255. Legge, p. 43, Watters, I, p. 172.
256. Watters, I, p. 172.
257. *Yama.*
258. *Raghu.*, VI. 40, *Mālav.*, IV. 20, 22, *D.C.* Ryder, p. 99, *Mṛccha.*, VI.
259. *Mālav.*, IV. 20-22.
260. *D.C.* Ryder, p. 99.
261. *Mṛccha.*, VI.
262. *D.C.* Ryder, p. 96, *R.T.*, IV. 328, 580.
263. *D.C.* Ryder, p. 96.
264. Ibid., p. 63.
265. *Karpūra.*, IV.
266. *D.C.* Ryder, pp. 64, 65, 141-42, *Mālav.*, IV. 20, 22, *Mṛccha.*, VI, *R.T.*, VIII. 2174, 2177.
266a. *J.R.A.S.B.* XVI, p. 116, J.C. Jain, Op. Cit. p. 68.
267. *Mṛccha.*, VI.
268. Ibid., VI.
269. *H.C.*, IV, J.C. Jain, p. 74.
270. *Life*, p. 73.
271. *Mālav.*, IV.
272. *Raghu.*, XVII. 19.
273. *H.C.*, II, IV, *Kād.* Kale.
274. *Bṛhat.*, 47, 18.
275. Satya Prakash Sangar, *Crime and Punishment in Mughal India*, Delhi, 1967, p. 35.

276. *Bṛhas.*, XXVII. 11, *Nār.*, App. 41.
277. Watters, I, pp. 172, 344.
278. *Yāj.*, I. 339, II. 81, 187, 202.
279. *R.T.*, VI. 41.
280. *Bṛhas.*, XXVII. 11.
281. *Manu.*, IX. 236-37, *Nār.*, App. 43-44.
282. *Yāj.*, II. 202, 294.
283. *R.T.*, VI. 108-112.
284. *Manu.*, VIII. 370, *Nār.*, XIV. 10, *Bṛhas.*, XXVII. 11.
285. Henry Elliot, *Memoirs on the History, Folklore and Distribution of the Races of North-West Frontier Province*, Vol. I. pp. 315-16.
286. *Nār* , XIV. 11.
287. *Kām.*, XIV. 16.
288. Ibid., XVIII.
289. *Śak.*, VI, *Mṛccha*, X. 53, *Yāj.*, II. 73, *R.T.*, VIII. 892, *Karpūra*, IV.
290. *Śak.*, VI, *Mṛccha* X. 35, 53.
291. *D.C.* Ryder, p. 128.
292. Ibid., pp. 92, 96.
293. *C.I.I.*, III, p. 62.
294. *R.T.*, VII. 1036.
295. Ibid., VI. 332.
295a. *Y.C.*, VII, Sec. 27.
296. *Nār.*, XV-XVI. 31, *R.T.*, VIII. 1341.
297. *Yāj.*, II. 282.
298. *Nār.*, XV-XVI. 23-24.
299. *Bṛhas.*, XXIV. 16.
300. *Yāj.*, II. 278.
301. *Matsya.*, 227. 171.
302. *R.T.*, VI. 254-55.
303. *Yāj.*, II. 279, *Matsya.*, 227. 200.
304. *R.T.*, VII. 602.
305. *Mṛccha*, X, *Mālav.*, II, *Śak.*, VI.
306. *Mṛccha*, X, *Nāg.*, IV.
307. *Mṛccha*, X. 2, *Mudrā.*, VII. 4, *Śak.* VI.
308. *Mṛccha*, X.
309. *D.C.* Ryder, p. 135.
310. *Manu.*, IX.
311. *Yāj.*, II. 298, 299.
312. *Yāj.*, II. 162.
313. *Bṛhas.*, XIX. 27-28.
314. *Manu.*, IX. 271-78.
315. *A.S.*, 4. 11, *Yāj.*. II. 276, *Nār.*, App 13-15, *Matsya.*, 227. 165-170, *Agni*, 162.
316. *Manu* , VIII. 314, 318, *Nār.*, App. 46-47.
317. *Nār.*, I. 245.
318. Ibid., I. 246, *Yāj* , I. 367.
319. *Manu* , IX 230.
320. *Matsya.*, 227. 177.
321. *Yāj* , I 367, II. 75.
322. *A.S.*, 3, 18. 19.
323. *Yāj.*, II. 213-214.
324. *Mahā.*, *Ādi parva*, 107-108.
325. *A.S.*, 4 13.
326. *Manu* , IX. 230.
327. *Yāj.*, I. 367, II. 75.

4

POLICE ORGANISATION

IT IS ESSENTIAL FOR ANY SYSTEM OF ADMINISTRATION by codified laws to have at its disposal some kind of a machinery to enforce law and prevent breaches thereof. Thus the organisation of a police department was considered as one of the most important functions of the state in order to protect the society from evil-minded people.

It has been said that the most common activities of police forces embrace uniformed patrol, criminal investigation and identification, prevention and detection of crime.[1] The Hindu theory of punishment being deterrent, it was the duty of the state to maintain peace and protect all by deterring evil-minded persons from commission of crime and deviation from the normal path of duty.[2] Śukra rightly observed that punishment was introduced to prevent the wicked from commission of unlawful acts.[3] The department of police helped the state in maintenance of public order and protection of person and property.

According to Yājñavalkya detection of crimes and arrest of the suspicious, protection of civil population and prevention of illegal acts were the basic functions of the police.[4] Kauṭilya also held the same view.[5]

The smallest administrative unit being the village the policing arrangements of villages were under supervision of the headmen.[6] Village councils were required to detect crimes committed within their jurisdiction.[7] Kauṭilya enjoined some obligations to villagers also in providing security measures[8]

and the practice continued as late as the twelfth century A.D. A Chauhān inscription of this period records that the villagers of Dhālop agreed solemnly to provide their own security measures. If articles were lost in the village they were to be restored by the members of the village community.[9] For policing the highways passing through their respective areas, the state even granted some concessions to the villagers.[10] Viṣṇu made specific mention of this joint responsibility and its significance.[11] Manu recommended that police stations should be established throughout the kingdom one being intended for two, four or five villages.[12] In spite of that, service of private individuals was solicited.

Towns even of a small size were generally protected by walls. This was customary even during the time of Kauṭilya.[13] After the death of Harṣa a Tibetan expedition sent by Srong-tsang is said to have captured at least 580 walled towns[14] which implies prevalence of the same age-old practice. Towns were administered with efficient police department to afford public security. The chief police officer during the time of Kālidāsa was the *Nāgaraka*.[15] Daṇḍin also made specific mention of these officers.[16] Generally a *Nāgaraka* was assisted by constables (*Rakṣiṇaḥ*).[17]

From the works of Kālidāsa it appears that the administration of urban police department was not always satisfactory and the integrity of officials was questionable. They were experts in accepting bribes and many of them were alcohol addicts.[18]

Daṇḍin throws welcome light on the activities of police department in urban areas. Watchmen usually wandered about the town either on their routine rounds or in search of thieves.[19] They kept watch on roads and highways with truncheons (*Daṇḍa*) in their hands.[20] Even ladies of suspicious activities were seized by them while on duty.[21] Police were posted not only in important places but also in cemeteries.[22] Gate keepers and royal guardsmen were ever alert[23] to detect criminals. Daṇḍin's information corroborates well with that of Śūdraka.[24] Kālidāsa records the existence of a band of frontier guards who often oppressed simple and innocent travellers.[25]

Military assistance was afforded to the police force when

it was needed.[26] This information of Kālidāsa is further corroborated by the record left by Hiuen-tsang. In order to maintain internal order and security in the seventh century, soldiers were requisitioned to perform police duties. On his way back, Hiuen-tsang was provided with a military escort. He also noticed that some troops not only guarded frontier but even punished refractories and mounted guards kept strict vigilance at night.[27]

Much of the police control was conducted by means of spies (*Guḍhapuruṣas* or *Cāras*)[28] who acted as agents and provocateurs. Kauṭilya devoted much of his attention to the position of spies in the field of politics.[29] Kāmandaka made a clear distinction between a *Dūta* and a *Cāra.* According to him the former was an open (*Prakāśa*) spy while the latter discharged his duties in secrecy.[30] He further added that a *Cāra* should possess the capacity to infer inner thoughts of men, must possess good memory, be soft in speech, quick in gait, swift in action, enduring, laborious and above all ready witted.[31] Actually they were considered as eyes of a king.[32]

Detection of criminals was one of the most important tasks of the police or vigilance department. A thief was usually detected by the police official, by means of lost article or by the foot mark. Persons previously convicted and men who lived in improper places were properly watched.[33] Regular vigilance was maintained on persons who concealed their caste, name and the like, exhibited addiction to gambling, women and wine, showed symptoms of nervousness, made inquiries about others' wealth and houses, continued suspicious movements, spent beyond their means and sold lost articles.[34] It was a common belief that thieves and other criminals had some sort of association with public women and gambling houses,[35] so regular search was made in these places.[36] Commenting on Yājñavalkya, *Mitākṣarā* suggested strict vigilance of gambling houses for detection of thieves as gamblers generally hailed from those who amassed wealth by unlawful means.[37] Bṛhaspati also shared this view.[38] Nārada indicated that persons in bad association should always be suspected.[39]

The watchmen and neighbours under whom the task of guarding an area was entrusted, were considered equivalent to

criminals if they remained neutral at the time of an attack.[40] The guards and thief catchers were expected to remain alert because when a house was plundered and the thief fled uncaught, the thief catchers, guards and inhabitants of that locality were compelled to make good the loss.[41]

A man, however, was not convicted of theft simply on the ground of his being found in possession of stolen goods as it was possible that he might have found the article on the road dropped by a thief.[42] So the whole matter was to be investigated properly. According to *Mitākṣarā* if a man was arrested on suspicion, his case should be properly investigated and he should be given a chance to clear himself either by proof or by an ordeal.[43] This was akin to the recommendations of Nārada[44] and Bṛhaspati.[45] Nārada further suggested that culprits should be traced by secret spies. These secret agents should associate with them, make friendship and carefully watch their behaviour and finally catch them.[46]

Persons with suspicious movements were occasionally menaced with torture by police men.[47] The latter exhibited enormous cruelty to exhort confession,[48] which sometimes proved fatal.[49] Arrested culprits were taken into jail custody.[50] In order to clear them of alleged guilt bails were also granted.[51]

Suleiman, the Arab traveller records that Gujarat in the ninth century was the most well protected area in India.[52] It implies the efficiency of the police administration of that part of our country.

From contemporary inscriptions and literature we come across the names of many police officials of various designations. Though exact function and nature of their duty is not clear, it can be assumed that these officials occupied posts of different status, authority and responsibility in the administrative hierarchy of the police department.

Coragrāha was probably a thief catcher. The term occurs in Nārada's and Kātyāyana's works.[53]

Corarajjuka was an officer who arrested robbers and fettered them.[54]

Cauraddharaṇika was the designation of an officer in charge of the recovery of stolen property or detection and exter-

mination of thieves. The term occurs in several inscriptions of the western and eastern part of our country. The Valabhī grant[55] and the Palitana plate of Dharasena II,[56] Khalimpur plate of Dharmapāla,[57] the Bhāgalpur plate of Nārāyaṇa Pāla,[58] the Naihaṭī plate of Ballālasena,[59] and a grant of Lakṣmaṇasena[60] are to mention a few.

Cauroddhartṛ was another denomination of a thief catcher.[61]

Caurika found mention in the Kalvan Jain plates of Yaśovarman of the time of Bhoja Paramāra to denote a police officer in charge of thieves and robbers.[62]

Daṇḍanāyaka is a term which dates back to the Kuṣāṇa period.[63] Different scholars have interpreted it in different ways. Aurel Stein has translated it as a "Prefect of Police"[64] and R.S. Pandit as a "Commissioner of Police".[65] Some have interpreted it as General or Magistrate.[66]

Hariṣeṇa, the composer of Allāhābād pillar inscription was designated as *Mahādaṇḍanāyaka.*[67] The Partāpgarh inscription mentions one Mahādeva, the chieftain of Ujjayinī with the epithets *Mahāsāmanta Daṇḍanāyaka* and one Tantrapāla as *Mahāsāmanta Mahādaṇḍanāyaka.*[68] It appears that they were great feudatories connected with the army[69] and their assistance was needed in civil administration.[70] Probably they were persons of military unit stationed in different districts to help the local authorities in maintaining law and order. The title seems hereditary[71] and kings often established matrimonial relations with these officers.[72] Varāhamihira places the queen, the crown prince and the *Daṇḍanāyaka* on the same footing in connection with the staff (*Daṇḍa*) to be prepared for them.[73] They were thus high rank officials. A number of seals of the *Daṇḍanāyakas* have been found from Bhiṭa sites.[74] Seals of these officers often bear emblem of a standing police man with a staff in his hand.[75]

Daṇḍapāśika was a police officer who held the fetters or noose of punishment. Inscriptions abound in references to this particular term.[76] Besides, the *Mudrārākṣasa,*[77] the *Yaśastilaka Campū*[78] and the *Kathāsaritasāgara* make mention of this post. It seems that the officer of this designation actually executed the sentence. Many seals of the *Daṇḍapāśikas* have been

unearthed from Basarh.[78]

Daṇḍabhogika, according to P.V. Kane, held the same position as that of the *Daṇḍapāśika*.[79] The term occurs in the Wala plate of Guhasena along with other officers.[80]

Daṇḍika was another police official whose name appears in the Deo Baranark inscription of Jīvitagupta II,[81] the Bhāgalpur plate of Nārāyaṇa Pāla,[82] the Nālandā plate of Devapāla[83] and a host of other contemporary inscriptions.

Daśāparādhika was probably the designation of a class of officers who were in charge of ten specified kinds of criminal offences or *Aparādhas*. The term occurs in several inscriptions of the period under review.[84]

Dauḥsādhasādhanika, though a vague term has generally been accepted as a group of officers whose duty was to catch dangerous robbers and culprits ordinarily difficult to arrest.[85] A few Pāla inscriptions make specific mention of the word *Mahādauḥsādhasādhanika*.[86]

Dauḥsādhika perhaps bears the same meaning as mentioned above.[87]

Daṇḍādhikarin was one of the chief officers of the police department. The word occurs much in the *Rājataraṅgiṇī* of Kalhaṇa.[88]

Sthānādhikaraṇika seems to be in charge of the *Sthānas* or police stations.[89]

Ārakṣika was a mere watchman in charge of vigilance. The Sunao Kala plates of Sangamasiṁha of 540-41 A.D. from Broach refer to this designation.[90]

Cāṭa-Bhaṭa are two terms and often occur jointly in different inscriptions.[91] They were perhaps officials in charge of the investigation of crimes. The Surāṭ plates of Mahārāja Vyaghrasena of 490-91 A.D. throw welcome light on their scheduled duties. It records that the small piece of land that was granted to the donee should not be entered by the *Cāṭas* and *Bhaṭas* except to arrest robbers or persons guilty of high treason.[92] These officials were notorious for their cruelty and malpractices. Yājñavalkya pointed out that royal duty consisted in protecting people from the undue harassment caused by these officials along with other corrupt persons.[93] Bṛhaspati has also expressed poor opinion about the *Cāṭas*.[94] Prof. H.M.

Bhadkamkar thinks that similarity of the word *Cāṭa* with *Cāṭu* (flattery) is so close that they can be regarded as flatterers, a group of royal officials misusing their position by being harmful to others.[95] The fact that they tried to please the king is revealed in an epigraphic evidence also.[96] Perhaps they appeased the king by their flattery and cheated his innocent subjects in the same way. Bāṇa has recorded their unpopularity among people.[97] Like the enjoyment of the privilege of obtaining a rent-free holding, the royal declaration prohibiting the entrance of *Cāṭa* and *Bhaṭa* to the donated land seems to be greatly prized in those days.[98]

Rājasthānīya is an expression whose actual function is almost vague. It occurs in the Māndāsor inscription of Yaśodharman and Viṣṇuvardhana,[99] the Banskhera inscription of Harṣa,[100] Palitana plate of Dharasena,[101] Bhāgalpur grant of Nārāyaṇa Pāla[102] and a host of others. Kalhaṇa refers to this term to denote a judicial designation[103] while Bühler interprets the term that also occurs in Kṣemendra's *Lokaprakāśa*[101] thus, "who carries out the object of protecting subjects and shelters them is called a *Rājasthānīya*".[105]

Nāgarika is a term which frequently finds mention in contemporary literary works to denote a chief of the police.[106]

Daṇḍaśakti was also a police officer, though nothing in particular is known about his office.[107]

Mahāpratīhāra was the chief of the door keepers. According to R.C. Majumdar he was a high official in the police and military department.[108] Besides inscriptions[109] the word also occurs in the *Kādaṁbarī* of Bāṇabhaṭṭa and the *Rājataraṅgiṇī* of Kalhaṇa.[110]

Khola has been interpreted by R.C. Majumdar as an officer in charge of the intelligence department or a spy.[111] The Khālimpur inscription of Dharmapāla makes mention of this designation.[112]

Guḍhapuruṣa was a secret service man.[113] The lexicographer Amarasiṁha specifically mentions his functions.[114]

Cāra was a simple spy.[115] "A kingdom", declares the *Śānti Parvan*, "is said to have its roots in spies and secret agents, and its strength is said to lie in the counsels of policy".[116] Manu points out that the wind moves everywhere

and penetrates all created beings. Just so should the king penetrate everywhere by means of his spies.[117] Spying is a very ancient institution and references to it are found as far back as the *Ṛg Veda.*[118] In the *Atharva Veda*, Soma is said to have rays like spies which never close their eyes and are present everywhere.[119] They were numerous enough to be considered by Megasthenes a special class in society.[121] Kauṭilya records an elaborate system of espionage prevalent in his times,[121] a practice well-maintained by the Hindu rulers of India not only for political purposes but also to detect criminals and restrain criminal tendency among people.

Footnotes

1. *Ency. Soc. Sc.*, XI-XII, p. 185.
2. *Manu*, VII. 14, 18, 22, *Matsya*, 227. 9.
3. *Śukra.*, IV, Sec. 6.
4. *Yāj* , II. 269-71.
5. *A.S* , II. 36.
6. A.S. Altekar, *The Rāṣṭrakūṭas*, p. 259.
7. *Nār.*
8. *A.S.*, 4. 13.
9. *E.I.*, XI, p. 40.
10. Ibid., p. 40.
11. *Viṣ.*, III. 67.
12. *Manu*, VII. 114.
13. *A.S.*, I. 3.
14. *I.A* , 1911, p. 111.
15. *Śak.*, VI.
16. *D C.* Ryder, p. 96.
17. *Śak.*, VI.
18. Ibid., VI.
19. *D.C.* Ryder, p. 85.
20. Ibid., p. 196.
21. Ibid., p. 129.
22. Ibid., p. 178.
23. Ibid., p. 63.
24. *Mṛccha.*, I, VI.
25. *Mālav.*, V.
26. *Śak.*, VI.
27. *Life*, p. 191.
28. *Amar*, II. 8. 13.
29. *A.S.*, I. 13, 14, 4. 4, 5.
30. *Kām.*, XII. 32.
31. Ibid., XII. 25.
32. Ibid , XII. 28, *Cāracakṣur Mahipatiḥ.*
33. *Yāj.*, II. 266.
34. Ibid., II. 267-68.
35. *D.C.* Ryder.
36. J.J. Meyer, *Sexual Life in Ancient India*, London 1952, p. 273.
37. *Yāj.*, II. 203.
38. *Brhas.*, XXVI. 2.
39. *Nār.*, App. 9-12.
40. Ibid., App. 15.
41. Ibid., App. 18.
42. *Kāt.*, quoted in *Vivādaratṇākara*, p. 337.
43. *Yāj.*, II. 269.
44. *Nār.*, App. 8-12.
45. *Bṛhas.*, XXII. 6.
46. *Nār.*, quoted in *Vivādaratṇākara*, p. 337.
47. *D.C.* Ryder, p. 129.

48. *Śak.*, VI.
49. *D C.* Ryder, p. 89.
50. Ibid., pp. 96, 176-77.
51. Ibid., pp. 96, 176.
52. Elliot and Dowson, *History of India*, I, p. 4.
53. *Nār.*, App. 18, *Kāt.*, quoted in *Aparārka*, p. 844.
54. *A.S* , 2. 6, 4. 13.
55. *I A.*, XV, p. 187.
56. *E.I.*, XI, p. 80.
57. Ibid., IV, p. 253.
58. *I.A.*, XV, p. 364.
59. *E.I* , XIV, p. 156.
60. Ibid., XI, p. 6.
61. *Yāj.*, II. 271, *Kāt.* quoted in *Aparārka*, p. 844.
62. *E.I.*, XIX, p. 69 f.
63. B.N. Puri, *The Gurjara Pratihāras*, Bombay 1957, p. 111.
64. *R.T.*, VII. 951.
65. Ibid., tr. by R.S. Pandit.
66. *E.I.*, VII, App. No. 291, 292, 296.
67. *C.I.I.* III, pp. 213, 216.
68. *Proceedings of I.H.C.* Aligarh, p. 90.
69. *E.I.*, VI, p. 92, *C.I.I.* III, p. 10.
70. *I.A.*, V. 49.
71. *C.I.I.*, III, p. 10, *E.I.*, VI. 92.
72. *E.I.*, XX, p. 1 ff.
73. *Bṛhat*. 72. 4.
74. R.C. Majumdar and A.S. Altekar, *The Vākāṭaka Gupta Age*, Lahore 1946, p. 264.
75. *A.S.I.*, 1903-4, p. 108.
76. *E.I.*, III, p. 323, IV, p. 253, IX, pp. 1-10, XI, p. 83, XII, p. 9, XIX (1),p. 55 ff, *I.A.*, XV, p. 187, 304.
77. *Mudrā.*, I. 22.
78. *Y.C.*, p. 50.
79. *K.S.S. Taraṅga* 4.
80. *E.I.*, XIII, p. 339.
81. *C.I.I.*, III, pp. 213, 216.
82. *I.A.*, XV, p. 304.
83. *E.I.*, XVIII, p. 321.
84. Ibid., XVII. p. 321, *I.A.*, XV, p. 304.
85. *E.I.*, IV, p. 211.
86. *I.A.*, XV, p. 304, 306, *E.I.*, XVII, p. 310, 321.
87. *E.I.*, XII, p. 9.
88. *R.T.*, VII. 591, VIII. 640.
89. *E.I.*, III, p. 323. The Ganeśgaḍ plates of Dhruvasena I, 526-27 A.D.
90. Beni Prasad, *The State in Ancient India*, p. 192.
91. *E.I* , III, pp. 258, 261, IV, pp. 208, 211, XIV, p. 156, *C.I.I.*, III, p. 106.
92. *E.I.*, XI, p. 221.
93. *Yāj.*, I. 336.
94. *Bṛhas.* quoted in *Aparārka*, p. 792.
95. *E.I.*, XI, p. 176.
96. Ibid., XII, p. 157, *The Talcher grant of Kulastambha.*
97. *H.C.* N.S.P. pp. 205, 211.
98. *C.I.I.* III, pp. 242, 249, *E.I.*, XI, p. 176.
99. *C.I.I.*, III, p. 158.
100. *E.I.*, IV, pp. 208, 211.
101. Ibid., XI, p. 83.
102. *I.A.*, XV, p. 306.
103. *R.T.*, VIII. 2618.
104. *Lokaprakāśa*, IV.
105. *I.A.*, V, p. 207.
106. *Śak.*, VI, *D.C.* Ryder, p. 96.
107. *E.I.*, IV, p. 253.
108. R.C. Majumdar ed., *History of Bengal* I, Dacca 1943, p. 286.
109. Ibid., p. 286, *C.I.I* , III, p. 218, *E.I.* XXII, p. 117.
110. *R.T.*, IV. 142.
111. *History of Bengal*, pp. 278, 286.

112. *E.I.*, IV, p. 250.
113. Ibid., XXII, p. 156.
114. *Amar.*, II, 8. 13.
115. *E.I.*, XXVI. p. 199.
116. *Mahā.*, *Śānti parva*, 83, 50.
117. *Manu*, IX. 306.
118. *R.V.*, I. 25. 13.
119. *A.V.*, IV. 16. 4.
120. J.W. McCrindle, *Ancient India as described by Megasthenes and Arrian*, pp. 85-86.
121. *A.S.*, I. 11, 12, 4. 5, 6.

5

JUDICIAL ADMINISTRATION

JUDICIAL ADMINISTRATION IS ONE OF THE MOST important functions of the state. It makes the people conscious about the existence of state by checking the criminal activities and settling various disputes arising out of civil and criminal breach of conduct. The Judiciary has been rightly defined "as the body of officials whose work consists in the resolution of complaint whether between subject and subject or between state and subject that the laws of the state have been broken in some particular".[1]

According to legal writers there were times when people were dutiful and habitually veracious, when there existed neither law-suits nor problems arising out of hatred, selfishness etc.[2] As such golden time of the vague past became gradually a matter of remembrance, various complications had set in to make the society conscious of evil and its remedy. Judiciary was undoubtedly a machinery to uphold the triumph of truth against evil, and justice against injustice.

In the Vedic age we do not find any clear reference to judicial organisation but the frequent mention of the word *Ṛta* implies that there existed the concept of a divine cosmic order by which the universe was conducted or regulated.[3] It appears that the later idea of *Dharma* was developed from *Ṛta*. The term *Dharma* was used in ancient India to designate law. In the Aśokān inscriptions it meant "righteousness" but in legal works it denoted the basic norm of good conduct. *Dharma* in ancient India had a religious basis and was enforced

by religious threat. It changed not by the will of the king but by the evolution of social custom, usages and practices. Gradually a juridical element was added to *Dharma* and the term became equivalent to sacred law.

Judicial administration was, therefore, necessary for the preservation and protection of *Dharma.* There are, however, very few data about the administration of justice or the code of law followed by the early Vedic Society. It has only been inferred from the later practice that king administered justice with the help of legal counsellors like the *Purohita.*[4] The *Śatapatha Brāhmaṇa,* on the other hand refers that the king held the rod of punishment.[5] Thus it was he who was the head of the judicial administration. It also appears that in his absence power was delegated to other officials.[6]

The *Dharmaśāstras* and *Arthaśāstras* of later origin, however, reveal a full-fledged and well developed judiciary. In these works we come across the term *Vyavahāra* several times. The term has various meanings. It has been used to indicate a dispute or law-suit,[7] "legal capacity to enter into transactions",[8] or the means of deciding a matter.[9] But the inscriptions reveal that the term was applied for judicial procedure.[10] Later Law Digests and Commentaries also use the word for legal procedure. Yājñavalkya has clarified the meaning by making a broad distinction between the term *Vivāda* and *Vyavahāra,* the former meaning a law-suit while the latter, simply a legal procedure.[11] According to him when a man wrongly harassed by another made a complaint to the king or to the judge that was regarded as the institution of a suit.[12] Kātyāyana pointed out that the term *Vyavahāra* denoted both by convention and by etymology the dispute between a plaintiff and a defendant ending in a definite decision or removal of doubt (*Vi*=various, *ava*= doubt, *hāra*=removal which implies removal of various doubts).[13] Medhātithi, the commentator of Manu explained that the word *Vyavahāra* was applied to that action of plaintiff and the defendant which they had to undertake for reclaiming their rights. The claim again was of two types, one resting on facts and the other on suspicion. Claim resting on facts was again sub-divided into two groups, negative (this man borrowed gold from me but is not repaying) and affir-

mative (he is taking wrongful possession of my land).[14] The *Mitākṣarā* defined *Vyavahāra* as averment (about a matter) as related to one self in opposition to another.[15] So the aim of *Vyavahāra* was to remove all sorts of doubts and establish truth and *Dharma* through a well regulated procedure. According to Manu it was the main duty of a king to try to destroy *Kaṇṭakas* (thorns i.e., harmful persons).[16] This was to be done by practising justice. Kalhaṇa has deservedly eulogised the merit of justice. "Justice invisibly keeps ever close to injustice and seizes it immediately as fire (is ever present in and at once seizes) fuel".[17] He further adds—"As the sunlight when it passes in the evening into the fire and into the watery orb of the moon, endows with its own brilliancy the lamps and the moonlight, and setting up these strikes down the rising darkness, thus Justice which follows the same course drives off Injustice".[18]

The word *Vyavahārapada* used by legal writers has been defined as "a topic of dispute".[19] Most of them had a tendency to group these disputes under eighteen to twenty titles. A distinction between civil and criminal disputes is recognisable in the writings of legal writers of the period under our survey. Yājñavalkya specifically makes mention of *Arthavivāda* (civil disputes)[20] which were separate from *Sāhasa* or criminal disputes. Bṛhaspati was more precise when he declared that there were two types of disputes originated from wealth (civil) and violence (criminal).[21] Kātyāyana also made a distinction by stating that disputes arose for not giving what should be given and for injury.[22] But it appears that though the ancient jurists were conscious of two types of disputes there were no distinct courts for trying different cases and judicial procedure was almost the same and the difference lay not in quality but in quantity and severity.

In the administration of justice the king was the fountain-head. Manu suggested that as basically men are not good and it is difficult to find a man of good nature following a straight path, it is, therefore, necessary to keep them so by applying the machinery of punishment.[23] Yājñavalkya recommended that a king should punish and bring to the proper path the castes and guilds when they swerve from their

Dharma.[24] The same idea finds expression in the Nidhanpur grant of Bhāskaravarman which states that the king not only protected the kingdom but also regulated the duties of various castes and stages of life.[25] Kāmandaka echoed the same view and envisaged a world ruled by *Mātsyanyāya* (strong devouring the weak) in the absence of proper punishment.[26] So it was the duty of the king to create a congenial environment so that people could live in peace and work for moral, spiritual and material upliftment by following the path of righteousness or code of conduct based on local usages, family customs, caste distinction, the stages of life and religious observances. It was the king who had to shoulder the responsibility of maintenance of the established order and suppression of the law breakers. The inscriptions glorify in the king the spirit of protecting good and suppressing evil,[27] as also putting down the wicked.[28] The Wala grant of king Guhasena comments that a king should win his subjects by carefully following the path prescribed by the *Smṛtis* and assuring protection to those who sought refuge under him disregarding his own interest.[29]

According to Kālidāsa a king was the father of his people for educating, feeding and protecting them.[30] Elsewhere, he states that the main duties of a king consisted in preventing the subjects from going astray, protecting them by settling their quarrels, acting as the best friend of the rich and by justly distributing their wealth among their heirs after their death.[31] He compares the power of the king with the Sun. As the Sun removes darkness so the king drives away the criminal tendencies of his subjects.[32]

Somadeva laid great emphasis on the personal supervision of the affairs of the state by the king. A king inaccessible to his subjects was the source of all troubles and transgressions from the path of virtue.[33] So a king was required to exercise strict control.[34] According to the *Matsya Purāṇa* the first and foremost duty of a king was the protection of his subjects unwearingly with his royal splendour.[35] The same was repeated in the *Agni Purāṇa*.[36] Protection according to Medhātithi was removal of troubles secular and spiritual.

Arab traveller Suleiman (815 A.D.) while speaking in admiration of Pratīhāra King Mihira Bhoja's administration

recorded that there was no country in India more safe from robbers.[37] It is thus clear that the King ensured safety to the citizens both from internal and external danger and it speaks highly of Bhoja's administrative capacity.

Thus, a King with his magnificent personality had to check the criminal activities. When a King without personality became the prey of evil counsellors the condition of the country deteriorated. Daṇḍin narrates that under such circumstances criminal tendencies became more active, the ladies broke the bonds of decorum, the strong killed the weak, thieves stole wealth, the paths of crime were free and frequented. The suffering citizens sick of these happenings had no other way out except lamentation.[38]

It should, however, be noted that the kingly office was not a bed of roses. Though he enjoyed supreme position he was not an autocrat. If he was an autocrat in the matter of punishment and punished those who were good and protected those who deserved punishment he reaped the evil consequences. Such a King could be dethroned and doomed to purgation.[39] On the other hand, he had to act as a constitutional monarch who executed laws in accordance with the canons of *Dharmaśāstra* and counsel of judicial officers.[39a] A King was not above law. So he himself was not free from punishment.[40] According to Manu, for an offence while an ordinary man was fined one, a King had to pay one thousand.[41] Bāṇa in the *Kādambarī* gives a long lesson on kingly duties said to have been delivered by the wise minister Śukanāsa to Prince Candrāpīḍa at the time of latter's consecration as crown prince where he severely criticised the divinity of the King. According to him it was an invention of unscrupulous flatterers to deceive foolish Kings.[42]

Nārada declared that divine law has a subtle nature and very difficult to understand. Therefore, the King must try causes according to visible path.[43] He further added that what was opposed to the revealed and traditional law or injurious to living beings must not be practised by the King and when it was practised by others the King should check it.[44] Kane has observed that "Dharma was the supreme power in the state and was above the King, who was only the instrument to

realise the goal of dharma".[45]

Administration of justice was the most sacred duty of a King. Kauṭilya in an earlier period prescribed that the King was to look into the disputes of citizens.[46] Manu also pointed out that a King desirous of looking into the disputes of people should enter the hall of justice.[47] Yājñavalkya emphasised that impartial administration of justice yielded same rewards as the Vedic sacrifices.[48] Impartial judgment was also the aim of Aśoka.[49] The *Nīlamata Purāṇa* writes that a King after entering into the court should deal all cases equally and impartially.[50]

Epics make special mention of the duty of a King in the matter of exercising of justice.[51] Classical Sanskrit literature also throws some light on this subject. In the *Mṛcchakaṭika* we find the real role of a King in the matter of settling a dispute.[52] Kālidāsa records that the King used to sit in his court of justice along with other officials for law and justice and for critical understanding of the nature of the business of the people.[53] He himself dealt with serious cases which needed careful scrutiny owing to doubtful nature.[54]

Like Kauṭilya, Daṇḍin informs that the day of the King was divided into eight periods of which the second was assigned to the hearing of the cases.[55] The exact time of holding the court was between 7.30 A.M. to 12 Noon[56] and no court was held on the 8th, 15th, 23rd and 30th days of the month, *Pūrṇimā* (Full Moon day) and *Amāvasyā Tithi*.[57]

Though the King was the head of the judiciary he could not act single handed. According to Yājñavalkya a King should enter the hall of justice along with scholastic *Brāhmaṇas* and politically experienced ministers and decide the case in accordance with the rules of *Dharmaśāstra*.[58] Kātyāyana held the same opinion that a King should be assisted by other members of the judiciary.[59] Kālidāsa made the point clear that even if the King was thoroughly learned he should not decide the case all by himself as that was not fair.[60] Nārada states that attending to the dictates of the Law Books and adhering to the opinion of his Chief Judge let the King try cases in due order with great care.[61] It would appear that great restraint was put on a King from doing anything arbitrarily.

It should, however, be noted that disputes should first be filed by the people and not by the King[62] or his officers. Kātyāyana pointed out that the King should not through influence or greed bring the disputes himself unless they were brought up by the parties involved.[63] This perhaps applied to civil cases only because from Kātyāyana we learn that in some cases a King could interfere even though there was none to complain.[64] Those offences might be of serious nature as can be gathered from Nārada.[65]

The highest tribunal of justice, however, was the ruler who used to hear all sorts of plaints. He entered the court in the morning, after having performed his daily duties and honouring his preceptors, astrologers, physicians, deities, *Brāhmaṇas* and domestic priests, decorated with flowers, ornaments, fine garments and with a cheerful countenance.[66] He was then expected to examine judicial quarrels between litigant parties following the principles of equity, discarding both love and hatred.[67] Thus a King constantly trying law suits with attention acquired widespread and brilliant renown in this life and the life after.[68] Though a King was assisted by other persons in the administration of justice, the final decision rested with him.[69]

The King was also the highest court of appeal. From the *Rājataraṅgiṇī* we learn that King Yaśaskara (ruled from 939 to 948 A.D.) used to hear appeals of the people. Once a merchant told him that he had sold his house to a rich merchant except the well. After his long absence of twenty years from the native land the man returned and found his well usurped by the vendee. He filed law-suits but judges decided in favour of the defendant. So he came to the King and requested, "decide the matter in person, if otherwise you have fear of committing sin." The King took the case in his hand and made a thorough enquiry and found out the real truth that the defendant had bribed the Kāyastha or scribe of the lower court to write *Kūpasahita* (along with the well) instead of *Kūparahita* (except the well). The King then revealed the whole episode in the judicial assembly, questioned the recorder whom he had brought up under a promise of impunity and convinced the Councillors. Finally, he restored the property to

the claimant and punished the culprit.[70]

In another case a *Brāhmaṇa* deprived of his earnings through the fraudulence appealed to the King and the King settled the disputes and restored the money to the plaintiff.[71]

Kalhaṇa also records that during the reign of King Candrāpīḍa a *Brāhmaṇa* woman appealed to the King to find out the criminal who had murdered her husband and the King performed his task with full responsibility[72] and the *Brāhmaṇa* lady blessed the King thus—"while you, O King, preside over this earth as judge, no one perishes without having reached the utmost object of (his) enmity or love."[73]

Nārada has observed that a King who is intent on doing his duty must be particularly anxious to discover what is right and what is wrong because there is a variety of dispositions among mankind.[74] He has also pointed out how an appeal was possible to the city court against the village court decision, and how a litigant could appeal to the King against the verdict of the city court but a dispute decided by the King whether correctly or incorrectly could not be reviewed.[75] Bṛhaspati made a clearer assertion that judges were superior in authority to meetings of kindred and the rest, the Chief Judge was superior to them and the King was supreme to all.[76] According to Pitāmaha, when a litigant was not satisfied with the decision of the lower courts, he could appeal to the King.[77]

If under pressure of more important business the King was unable to try the cases personally he could appoint a Chief Judge or *Prāḍvivāka* to deputise for him along with other *Sabhyas* fully conversant with law.[78] A judge was generally called as *Prāḍvivāka*[79] or *Dharmādhikārin.*[80] A judge was styled as *Prāḍvivāka* because *Prāḍ* (*Pṛcchati iti Prāḍ*) means one who puts question to the parties and witnesses in a dispute and *Vivāka* (*Vivecayati yat tasmāt iti vivāka*) means one who discusses the issues involved or analyses the truth.[81]

A Chief Judge had to be endowed with various qualities worth mention. Generally a man of *Brāhmaṇa* origin was sought for this post.[82] Kātyāyana, however, recommended that when a suitable *Brāhmaṇa* was not available a Chief Judge could be selected from learned men of *Kṣatriya* and *Vaiśya* Castes. But never should a King select a candidate for the

post of a Chief Judge from the men of *Śūdra* Community.[83] Caste distinction was thus quite evident in different branches of administration.

A *Prāḍvivāka* or Chief Judge was also required to be fully acquainted with the eighteen titles of law and with the eight thousand sub-divisions thereof, skilled in Logic and other branches of Science and thoroughly versed in revealed and traditional lore.[84] The royal Chaplins who were well grounded in these were also appointed to the post. Such was the case under the Chāndella King Dhaṅga in 1003 A.D.[85] The *Matsya Purāṇa* suggested that a Chief Judge should maintain equity in justice towards a friend and foe, he should be proficient in *Dharmaśāstra*, must be of the best of the *Brāhmaṇas* and of noble parentage.[86] Thus birth and learning played a vital role in the selection of a Chief Judge.

The Chief Judge had to shoulder many responsibiiities. Side by side he did enjoy considerable amount of independence and freedom. K.P. Jayaswal has justly remarked that "the administration of justice under Hindu monarchy remained always separate from the executive and generally dependent in form and ever independent in spirit."[87] It should, however, be noted that for malpractice and improper attitude he had to suffer sufficient punishment like other criminals.[88] According to Śūdraka, a judge though ever conscientious might easily incur censure. A judge must be learned in law, skilled in detecting deceit, eloquent, patient, impartial both towards his kinsmen and friends and towards his enemies; pronounce judgment only after due deliberation and enquiry, should be a guardian of the weak, terror to the wicked, faithful follower of the right path, undeterred by personal interest, his mind must be a door ever open to truth and he must exert himself to avoid royal displeasure.[89] The trial scene of the *Mṛcchakaṭika* reveals the significant role played by a Judge in the administration of justice.[90] The Judges, however, could only act during King's pleasure. The *Mṛcchakaṭika* records a King's brother-in-law's speech which states in rage that he should apply to the King and have the Judge removed and another appointed in his place. This threat to the Judge and consequent yielding on the part of the latter reveals that dis-

missal of such high judicial officers was not unknown and back door influence was also practised.[91]

As an insignia of his position the Chief Judge carried the seal of the King. The Court conducted by him was regarded as *Mudrita* or furnished with the royal seal.[92]

In order to assist the Chief Judge the law givers pointed out that a King should appoint at least three assessors or *Sabhyas*.[93] According to Bṛhaspati a judicial assembly in sanctity was equivalent to a sacrificial meeting in which three, five or seven *Brāhmaṇa Sabhyas* acquainted with the world, the *Veda* and law should sit.[94] He further added that they should be devotional in performing their duties, strictly veracious and virtuous, devoid of wrath and covetousness and familiar with legal lore.[95] They were expected to be absolutely impartial towards friends and foe.[96]

These assessors were generally selected from the noble *Brāhmaṇa* parentage failing which the *Kṣatriyas* and *Vaiśyas* were welcome. But they should also possess the required qualification.[97] While explaining Manu's verse, Medhātithi states that even though a *Śūdra* might learn bits of law and become a Councillor or an officer for inflicting punishment he should not pronounce any opinion on the merits of cases investigated in the Court.[98] It appears that the *Śūdras* had no power in the judicial administration.

The King entered the court with Chief Judge, assessors and the *Brāhmaṇas*.[99] *Sabhyas* or the assessors were directly appointed by the King while the *Brāhmaṇas* by their learning and proficiency used to attend the court. No one could sit in the court as a matter of right. One should have to be endowed with required qualifications to offer unprejudiced advice to the King.[100] Nārada pointed out that one who had not been authorised must not speak on any account at the trial. Only authorised persons should deliver their opinion in an unbiassed spirit.[101] But Nārada, it seems, did not include the learned *Brāhmaṇa* associates of the King in this respect.[102] Kane suggests that Nārada's rule was applicable only to the people who used to attend the court to witness the trial or accompanied the involved parties.[103]

It was the duty of the assessors to help the King to

follow the true path and to check his deviation.[104] The assessors, however, could only act as advisers and not actual administrators of justice.[105] The actual administrator was the King himself or in his presence or absence the Chief Judge could represent him.

If the assessors were swayed by covetousness and passion they were properly punished.[106] From the *Daśakumāracarita* it is clear that Judges often used to decide matters after accepting bribes.[107] But once detected they were punished. The Chief Judge and the *Sabhyas* were not allowed to converse in private with the involved parties. If detected they were fined.[108] Kātyāyana remarked that loss caused by the fault on the part of the assessors should be compensated by them to the losing party but their judicial decision should generally remain unchanged.[109] The main duty of these assessors was to investigate the merits of the case.[110]

From Bṛhaspati we learn that a Court of Justice was composed of ten members, viz. the King, his chosen representative (the Chief Judge), *Sabhyas* (judges or assessors), the law (*Smṛti*), the accountant, the Scribe, gold, fire, water and the King's own officer.[111]

The *Smṛti* or herald should proclaim the judgment of the Court and announce its decrees and penalties.[112]

The duty of the computer or accountant (*Gaṇaka*) was to compute the exact amount of claims. He should be well-versed in grammar and lexicography, skilled in the art of computation and be honest, while the Scribe (*Lekhaka*) should write down the judgments delivered and be acquainted with various methods of writing.[113]

Gold, Fire and Water were placed in the court for ordeals.[114]

The Bailiff (*Sadhyapāla* or *Sapuruṣa*) was selected by the King from honest and obedient persons to summon and to keep in custody the witnesses, plaintiff and defendant.[115]

Further, the King used to convene an assembly consisting of wealthy merchants of good family and character, belonging to guilds and advanced in age and free from malice.[116] According to *Mitākṣarā* they were convened in order to win over the people.[117] From the inscriptions we find references to *Nagara-*

śreṣṭhin, *Sārthavāha* or the people of that class occupying a seat in the court. Probably they were specially asked to attend the Court to watch the judicial procedure in recognition to the growing prominence of the merchant class in the contemporary society.

It is not clear whether the lawyers as an institution functioned in the contemporary judicial system. Some scholars have tried to interpret a verse of Manu in support of the existence of lawyers where it has been stated that *Vipra*, witnesses, sureties and the judge worked for others and the *Vipra*, creditor, merchant and the King used to get profited in the transaction.[119] It might, however, be possible that the term *Vipra* mentioned by Manu was a *Sabhya* of the Court who would receive some allowance. *Smṛtis* are not very revealing either in this respect. But a clear case of a lawyer pleading for a fee occurs in Asahāya's commentary on *Nārada Smṛti*. Here reference is made to one Smārtadurdhara who instigated a party not to pay the debt and promised to secure exemption from a law court by citing appropriate texts in this connection if he was paid the fee of a thousand *Drammas*.[120] Though he pleaded for the party the case was lost.[121]

From the work of Śukra it can be gathered that the practice of appointing agents in the law courts to defend a case when a party was himself unable due to ignorance or preoccupations was not unknown. Those agents were known as *Niyogin* and they guarded the interests of their clients. If they did otherwise out of greed sufficient punishment was inflicted.

Such agents used to receive wages from 1/2 per cent to 6 per cent according to the value of the property, the larger the claim in dispute the smaller was the percentage of the fee.[123] Altekar observed that "there is no evidence to show that there was a regular class of persons in ancient India whose profession and status were the same as those of the modern lawyers and whose members were licensed by the state to follow the profession."[124]

The Law Courts were of four types, stationary (*Pratiṣṭhita*) Courts which sat in a town or village, ambulent (*Apratiṣṭhita*) Courts which had no fixed seat, one furnished with the King's signet ring superintended by the Chief Judge (*Mudrita*) and one

directly presided over by the King (*Śāsita*).[125]

A royal Court house was generally built in the middle of the fortress with water and trees adjacent to it and the hall of justice situated on its eastern side properly constructed facing east.[126] According to Kālidāsa the Court of justice was situated in the outskirts of the palace[127] where the King sat on proper time.[128] A hall of justice was furnished with pictures, images of deities, supplied with grain, fire and water.[129] An atmosphere of sanctity and gravity was thus created to enhance the solemnity of justice. The judges used to sit on high cane seats.[130] Before the Court Sessions, hall and seats were properly arranged.[131] The King used to sit facing the east, the judges facing the north, the accountant facing the west and the scribe facing the south.[132] The *Mṛcchakaṭika* gives a graphic description of the hall of justice which has great conformity with the *Smṛti* rules. The constitution of the Court described by Śūdraka consisted of the Chief Judge (*Adhikaraṇika*), *Śreṣṭhin*, *Kāyastha*, etc. ministers, messengers and spies (*Mantrin*, *Dūta*, *Cāra*) were also present. The functions of the Chief Judge and *Sabhyas* were confined to directing investigation and passing the judgment while the actual award of punishment rested with the King. The *Śodhanaka* was a servant whose duty was to sweep the Court hall and arrange seats. Then appeared judges, the involved parties, witnesses and the officers of the police department.[133]

Two seals from Nālandā containing the term *Dharmādhikaraṇa* (in one case the name *Śrī Śilāditya* is inscribed) have been unearthed.[134] It appears that Nālandā was the headquarters of some Court.

Apart from the royal Courts presided over by the King or by his representatives under royal seal, there were some popular courts recognised by the legal writers of this period and the commentators and Law Digests also make mention of them. Existence of these popular courts is one of the most notable features of ancient Indian judicial administration. Altekar has defined the *Sabhā* of the Vedic Society as a "village social club" where "few items of the simple village government of the age were also transacted there by its members, when it was necessary to dispose of them. These probably included steps for the communal safety and decisions in the matters of village

duties."[135] Probably these *Sabhās* functioned as popular court. In the *Arthaśāstra* of Kauṭilya also there are few references to popular bodies functioning as dispensers of justice.[136]

Yājñavalkya was the first to mention specifically three popular courts viz. *Kula*, *Śreṇi* and *Puga* arranged in the ascending order of importance, the *Kula* being the lowest court for arbitration in small matters.[137] *Mitākṣarā* has defined these courts thus—*Kula* was an assembly consisting of relations agnatic and cognatic (thus it was a body of family elders), *Śreṇi* was the Corporation of persons following the same craft or profession though of different castes. From a very early time these guild and corporate activities became prominent. These *Śreṇis* had their own executive committees and they must have functioned as courts to settle disputes among the members of the guilds. The *Pugas*, on the other hand, were the assemblies constituted of men of different castes and occupations but inhabiting the same village or town.[138] In the Gupta inscriptions we also come across the term *Pañcamaṇḍalī* which was perhaps akin to modern Panchayats.[139]

Nārada has also made mention of *Kula*, *Śreṇi* and *Gaṇa* Courts which were invested with the power to decide law-suits each succeeding one being superior to the preceding one in order[140] Kātyāyana, however, makes a distinction between the *Gaṇas* and the *Pugas*. According to him *Gaṇas* were equivalent to *Kulas* or assembly of families.[141] While the *Vyavahāra Prakāśa* uses *Gaṇa* and *Puga* as synonyms,[142] it appears that Kātyāyana is not very explicit. If *Kula* and *Gaṇa* meant the same thing then Nārada would not have selected synonymous terms to refer to two distinct local bodies. Moreover, unlike Yājñavalkya he has deliberately omitted the term *Puga* to include *Gaṇa* in the list.

Bṛhaspati prescribed that *Kula*, *Śreṇi* and *Gaṇa* and other persons duly authorised by the King should decide law-suits except cases of violent crimes.[143] He further added that meetings of kindred, companies and cohabitants and Chief Judges were the resorts of passing of sentence to whom he whose cause had been previously tried might appeal in succession. When a cause had not been duly investigated by *Kula* it could be decided by *Śreṇi*, when it had not been examined by *Śreṇi* it could be decid-

ed by *Gaṇa* and finally by the royal judges.[144] He also ordained that for persons roaming the forest a court should be held in the forest; for warriors in the camp and for merchants in the caravan.[145] Cultivators, artisans such as carpenters and the like, artists, money-lenders, companies of tradesmen, dancers, persons wearing the token of a religious order should adjust their disputes according to the laws of their own profession.[146] Bṛhaspati even warned a King not to meddle with the disputes of ascetics and of persons versed in sorcery and witchcraft which should be settled by persons familiar with the three *Vedas*.[147]

Yājñavalkya pointed out that in disputes relating to boundaries of land under cultivation, persons living in adjacent villages, aged men, competent people, cowherds, cultivators of boundary land and persons who frequent to forest should determine the dispute or persons from neighbouring villages even in number, 4, 8, 10, should settle the matter.[148] Kauṭilya held the same view.[149]

Members of the guilds enjoyed some privileges and when they were involved in serious disputes, guilds offered their helping hand for their settlement. The anecdote of Anantakīrti finely illustrates the judicial functions of these guilds who acted as courts, held proper hearing, discussed the problems and ultimately pronounced the verdict.[150]

Guilds or such corporations functioned not only as courts in settling private disputes but also in their business concerns. When any of their members was found out to have practised fraud he was required to clear off on oath or ordeal.[151] The guild-courts could punish the wrong-doers from mild censure and rebuke to repulsion.[152] According to Nārada, those who caused dissension among the members of an association should undergo punishment of a severe kind for they would prove extremely dangerous like an epidemic if they were allowed to go free.[153] The guild-courts were free from any censure by the state for administering just punishment to mischief-mongers. Bṛhaspati suggested that whatever was done by guild officials harsh or kind towards the members in accordance with the prescribed regulations must be approved by the King because they were the appointed managers of affairs.[154] Nārada assured that the King should maintain the rules and regulations and usages of

these corporate organisations.[155] Kātyāyana laid down that a member of a group who opposed what was reasonable, who gave no scope to a speaker or who spoke what was absurd should be made to pay penalty.[156] He further added that members of the associations should act only in accordance with the conventional rules of their groups,[157] but it should be noted that one must also observe the rules laid down by the King, otherwise he should be censured and fined.[158] So a member of the guild was responsible to his association as well as to the King and had to oblige both. It has been remarked that in India "the authority of the guilds was not derived from the delegation of power from above but had an independent existence."[159] S.K. Das has called it a "democratic element".[160] Yet that independence of authority never allowed them to exercise their powers like autocrats because ultimately they were responsible to the state and so there were occasions when state interference was courted. If the heads of the associations actuated by hatred tried to injure a single member the King could restrain and punish them.[161] It thus appears that any person punished by the local judicial assembly could appeal to the King and when their decisions were against the laws and usages the King had the right to annul that. Thus the security of an individual from injustice of these local courts undoubtedly rested on the state.

The importance of the heads of the guilds also increased to a great extent with the development of trade, commerce and industries. In contemporary inscriptions we often find references to them. The Indore copper plate of Skandagupta refers to Jīvanta as the president of a guild of oil men,[162] while Mātṛdāsa was perhaps the president of a guild of Gaḍhwar as recorded in the Gaḍhwar stone inscription of Candragupta II.[163] The Karitalai inscription mentions the Chief of the *Vāgulikas* (traders in betel leaves).[164] We find other references like Chiefs of distillers of liquors,[165] betel sellers[166] and gardens.[167] The accentuated importance of these guild Chiefs is well reflected in the *Smṛti Candrikā.*[168]

Aparārka quotes Bṛhaspati to establish the judicial authority of the head of guild where he could reprimand, condemn or even excommunicate a wrong-doer.[169] These

Chiefs represented the official organs of the corporations and they were entrusted with whole jurisdiction and assisted by committees of two, three or five persons.[170] Only those persons who were honest, acquainted with the *Vedas* and their duty, able, self-controlled, came from noble family and skilled in every business were appointed as heads of associations.[171] Hostile, dissolute, bashful, indolent, timid, avaricious or very young persons were not usually chosen for that post.[172]

In a village, the village headman played a significant role. His office was hereditary.[173] Inscriptions have ample references to these men of eminence.[174] Village headmen had certain judicial powers. From Kauṭilya it appears that on certain occasions they inflicted monetary punishment and excommunication and tried for some offences.[175]

The *Agni Purāṇa* while discussing the Yoga philosophy draws a fine analogy between the working of the body organism and the administrative set up of a village. The five senses of the body are compared to five householders (*Kuṭumbas*) of the village council. It is headed by soul, which, the loftiest of all, is like the *Mahattara* of the village. This may allude to the eminent position enjoyed by a headman of the village.[176] Bāṇa provides an identical comparison between the five great senses of the body and the *Pañcakula* and points out its duties which include judicial as well as general administrative functions in the village.[177] The council of five must have been very popular. In the Ghugrāhaṭi copper plate inscription of Samācāradeva (6th century A.D.), however, all the members of the council have been referred to as *Mahattaras*.[178]

Nārada remarks that in disputes among merchants, artisans or like persons and in disputes concerning persons subsisting by agriculture or as dyers, it is impossible for outsiders to pass a sentence; and that responsibility therefore rested on experts in such matters.[179]

It appears that the judicial procedure of these courts was like that of royal courts with some necessary modifications. Some Cola inscriptions of South India reveal that village assemblies or local bodies tried even criminal cases like accidental homicide, suicide etc. and passed sentence.[180] Kauṭilya also gave the village headman the power to punish thieves and

adulterers.[181] It is not unlikely that these local bodies tried both civil and some criminal cases.

These local bodies had their own sets of rules which were recognised by the state. A King was expected to respect local usages, customs and rules provided they did not clash with the sacred law.[182] This adherence to the usages of the forefathers had its origin as early as in the *Rg Vedic* age.[183]

Justice in modern times is very expensive. The heavy court fees charged from the applicants deprive many a sufferer from having his grievances redressed by the court but in ancient India no court fees were levied on those who claimed justice. It appears that at the inception of a suit nothing had to be paid but in some civil cases certain fines were imposed on defeated parties. Manu prescribed that in monetary matters (civil cases) the defeated party should be made to pay the judgment debt to the successful party and also a fine to the King.[184] Kātyāyana echoed the same idea.[185] Thus according to Viṣṇu and Yājñavalkya, fees to the tune of ten and five per cent of the disputed sum had to be paid by the debtor and creditor respectively as *Bhṛti*.[186] Yājñavalkya also pointed out that when the debtor totally denied the fact of debt and the creditor established his claim at a court, the debtor had to pay the stipulated sum to the creditor and an equal amount to the King, but if the creditor's claim proved fake he had to pay twice the amount of the sum claimed by him to the King as a fine.[187] Moreover, where a debtor, able to repay his debt, did not do so due to wickedness should be made to pay the debt besides a fine of five per cent to the King.[188] To the verse of Manu which laid down that for confession before the court a debtor had to pay a fine of five per cent while for denial fine was ten per cent,[189] Medhātithi added that it should apply only in special cases of negligence or loss of memory.

In other civil suits like breach of guild rules and other groups,[190] for misappropriation of a pledge[191] or making false claims to the ownership of lost goods[192] similar fines have been provided.

The fees were, however, higher in cases of appeal. If a man thought that the verdict given against him was unjust he

could demand for a retrial but had to promise to pay twice the fine decreed by the first verdict in case of defeat and in case he came out victorious in the second suit, double fine was inflicted on his opponent and the unjust judges.[193]

From the explanation of a verse of Yājñavalkya[194] by Vijñāneśvara and Aparārka, it appears that the wagers (*Paṇa*) on law suits were also a source of court's income because the staked sum was to be paid to the king or the court. Nārada laid down that the wager was to be stipulated in writing.[195] It should take place after plaint and answer were filed and the court procedure had begun properly.

The most salient feature of the judicial administration was public trial.[196] Cases were disposed of in normal course except in urgency.[197] Ordinarily procedure of accusation followed. The plaint was the most essential part of a proceeding-at-law.[198] A plaintiff first filed plaint stating precisely his claim.[199] From Kātyāyana we learn that when a litigant came before the court at the right time and made his bow to the king or the judge the authority should address him thus—"what is your business ? what injury done to you ? Don't be afraid, speak out. By whom, when, where and why was the injury done ?" Whatever reply came from him should be considered by judicial personnel to find out whether the matter was legally entertainable and if so the judge should deliver the sealed order to the plaintiff or order the bailiff to summon the defendant.[200] It was the court practice that the judge was to send attendant out of his court room to find out if any litigant was waiting outside for demand of justice.[201]

The statement of the plaint had to be recorded in writing.[202] According to Bṛhaspati the plaintiff was at liberty to alter his declaration when it was defective and redundant till the defendant had tendered his answer in the presence of judges.[203] From Kalhaṇa it is evident that in a law-suit a merciful order was appropriate in the case of a person who had been under a mistaken notion but severity was applied against him who had employed fraud.[204]

There were four parts of a trial, viz. plaint (*Pratijñā*), answer or written document (*Uttaram*), proof (*Kriyā*) and decision (*Nirṇaya*). All plaints, it should be noted, were not

acceptable. A plaint that omitted time, place, real matter in dispute and was opposed to the usages of the country or prohibited by the royal order and vague in several points in dispute (*Vyavahāra pada*) was considered defective as well as unacceptable.[205] According to Nārada the plaints which related irrelevant subjects or were vague, meaningless, wanting in propriety, deficient or redundant in writing and had been damaged should be rejected.[206] Kātyāyana added that plaint which contained an imaginary grievance, disclosed no injury, contained letters or words making no coherent sense and contradictory statement was not to be accepted.[207] A plaint in which a mere dot was omitted or a word or syllable had been obliterated or too much had been written or which was absurd should also be avoided.[208] In other words a plaint was required to be thorough, logical, precise and carefully written. Bṛhaspati further pointed out that a *Nirarthaka* plaint where injury or monetary value was negligible should be rejected by the King.[209]

Yājñavaikya advocated that no law suit between teacher and pupil, husband and wife and master and servant should be entertained.[210] *Mitākṣarā*, however, explained the verse thus, that this law could be applied only in petty cases and not in serious matters. For instance when a teacher flogged his pupil with a cane stick or rope on his prohibited parts (head) of the body then a plaint could definitely be made.[211]

When several complaints came at the same time, both Manu and Kauṭilya prescribed that preference should be given according to the *Varṇas* or castes of the plaintiff.[212] It is only natural because caste discrimination guided the contemporary public and private life. But Kātyāyana's code is more rational and refreshing as according to him priority should be given to a plaint where injury was greater or the cause more important.[213]

If the plaint was accepted, the judge usually summoned the accused by a sealed warrant (*Mudrā*) or by a court messenger.[214] From a sixth century inscription it is explicit that persons engaged in work at home or at the shop could be summoned to the court by means of a sealed ring or a letter by a messenger only when they were involved in a criminal case,[215] but persons engaged in such works as the worship of a

deity, a sacrifice or a marriage ceremony could not be summoned to the court to refute the charges brought against them.[216] Nārada laid down that cowherds engaged in tending cattle, cultivators in the act of cultivation, artisans while engaged in their own occupations, soldiers during warfare could not be summoned at once before a court of justice.[217] Distress, calamity, age and sex of the person and also the state of his mind were considered before summoning the defendant.[218] Women of noble family were usually not summoned to the court personally except in grave circumstances but independent women who earned their livelihood, or were unchaste or excommunicated and prostitutes, could be summoned.[219]

Those who were able but did not appear in the court were duly fined because non-attendance in obedience to an order from the court was an offence.[220] Fine was, however, imposed in normal situations. In unnatural circumstances concessions were granted and second summons was sent.[221]

Chosen representatives could be sent by the defendants when personal attendance was not mandatory. But even if a representative spoke for his client in court the victory or defeat concerned the actual party and not the agent.[222] He who spoke on behalf of another without being either the brother, the father, the son or the appointed agent was punishable.[223] In serious cases representatives were not allowed.[224]

The plaintiff could put the accused under arrest (*Āsedha*) or restrain his free movements by means of an appeal to the king until legal summons had been issued.[225] Transgressions from such prohibitions incurred legal punishments.[226] The court, however, did not allow unnecessary harassment of the defendant under arrest.[227]

Only when both the parties or their appointed agents were present at the court that the actual judicial procedure started. Both the parties had to give sufficient surety.[228] Otherwise, the court's bailiff (*Sādhyapāla*) took them into custody.[229] When a person was kept in custody, he was allowed to perform his daily acts and rites without hindrance but he was fined if he fled from the custody.[230]

When the plaint had been well-defined, with a clear exposition of what was claimed and the meaning of the plaint

fully established by the plaintiff with detailed information of year, month, fortnight, day, names of parties and castes,[231] then the judge would ask the defendant to write his answer (*Uttara, Pratipakṣa* or *Vāda*).[232] In urgent and important cases the answers had to be made immediately,[233] while longer or shorter respites could be allowed according to the actual nature of the dispute.[234] When the defendant asked for time for timidity or terror or because of his deranged memory the delay was generally sanctioned.[235] Adjournment ranged from one day to one year[236] or even more.[237] Kātyāyana was not in favour of adjournments.[238] In fact, adjournment hampered the normal course of judicial procedure and created various complications.

The intoxicated, lunatics, imbeciles, infants and those abandoned by their friends and relatives, charged with a heavy crime or were excommunicated from society were not allowed to deliver answers.[239] The answer in writing should exactly correspond to the contents of the plaint and it was expected to be clear, precise and not absurd or ambiguous.[240]

Answers were generally of four types viz. denial (*Mithyā*), confession (*Saṁpratipatti* or *Satya*), protest or a special plea (*Kāraṇa Pratyavasakandana*) and reference to a previous verdict in a similar case (*Prānnyāya* or *Pūrvanyāya*).[241] Silence or refusal to answer was considered as equivalent to admission.[242]

The denial was like this—It is not true, I do not know it, I was not present there, or I was not yet born at that time. In case of protest or special plea the accused for instance would say—I of course received 1000 but I have returned the amount to you.[243] That there was a former judgment between the parties might also be cited in an answer.[244]

Confession was generally extorted by promise of some concessions.[245] In case the accused or the defendant confessed his guilt the elaborate legal procedure became simple and shortened and the victory of the plaintiff was established. When litigants quarrelled in a court of justice the defendant could not make a counter claim[246] nor another plaintiff attack the defendant. When any of the involved parties died while the case was pending, his successor or representative could continue the litigation till the case was settled.[247]

The judges having heard both the plaint and the answer

had to decide to which party the burden of adducing proofs should fall.[248] Generally, in cases of denial the plaintiff and in cases of protest or special plea or reference to former judgment the defendant had to start the act of proving (*Kriyā*).[249] When the evidence was equally strong on both sides and laws and customs divided, a mutual reconciliation between the two parties through royal order was recommended.[250]

Alberuni records that written plaint was generally furnished with data about proofs.[251] The *Mṛcchakaṭika* meticulously records the court proceedings which precisely corroborates the writings of legal authors. Thus, the *Arthin* or complainant appeared personally before the judge and made statements on his plaint which were recorded by the court scribe. Then Cārudatta, the accused was summoned to appear in the court for defending himself against the charge. An attempt was made to extort from him the confession of guilt even under the threat of flogging. The judges' task was to find out the truth from statement of parties and evidence elicited by questions and cross-examination.[252]

Evidence or mode of proof were of two types, human and divine (*Divyam*).[253] Human evidence was again three-fold, documents, possession and witnesses.[254] Ordeals were of divine method of proof.[255] Ordeal was resorted to only in cases in which the ordinary method of proof was not feasible.[256] If one party preferred human evidence and the other the divine, King was to accept human modes of proof.[257] The accepted rule was that trial by evidence was the ordinary procedure and trial by ordeal was an extraordinary one.

Of the various modes of human proof Nārada pointed out that a document was always strong, witnesses were strong so long as they were living and possession became strong with the passage of time.[258]

Documents were undoubtedly the most suitable method of evidence as written records had greater importance in legal matters. Law givers had thus eulogised documents for their utmost utility.[259] Nārada divides documents into two groups—one written by the executant himself in his own hand and that written by another without attesting witnesses though such documents needed to be attested.[260] According to *Mitākṣarā* do-

cuments were of two types—*Rājakīya* (Public) and *Jānapada* (Private),[261] while Bṛhaspati divided it into three groups—royal writing, writing made at a definite place and one written in one's own hand.[262] Yājñavalkya thinks that a document written by the executant himself was more authoritative provided it was not executed by force or fraud.[263] A document was expected to be precise, detailed, authentic and signed by witnesses.[264] A document was considered invalid when it was executed by an intoxicated person, by a criminal, a sick or dying person, a dependent, a female or a minor, under threat, fraud or force.[265] It would also become invalid owing to defects in the witnesses, scribe or executant.[266] Thus, the authenticity of the document should always be examined carefully. A document was generally not expected to be challenged by oral evidence (as that might create confusion). For that purpose another document could be produced.[267] Transaction by a document was considered superior to oral evidence.[268] Yājñavalkya remarked that a document transferred into another country, or one soiled, spoilt, mutilated, and contained illegible scripts was considered as invalid.[269] Old documents with fresh appearance and vice versa were also to be suspected.[270] So in order to establish validity of a document it was expected to be read out occasionally to members of families, associations and other groups because a writing which had neither been seen nor read out for thirty years was considered invalid.[271] In doubtful cases authenticity had to be established by proper investigation.[272]

Though documents were of immense importance in legal matters, they were often fabricated with great skill, Law givers severely criticised this practice and prescribed punishment for such an offence.[273] But a number of inscriptions unearthed bear marks of forgery. The *Rājataraṅgiṇī* refers to a case of forgery of a written document which transferred the word *Sa* into *Ra* and thus created various troubles and complications.[274] A document was thus expected to be renewed when it was damaged, stolen, lost or badly written[275] and tested properly to see whether authentic or fabricated[276] by even comparing the writings.[277]

Title of possession or enjoyment was another mode of human proof which was considered in judicial transactions. But

this type of proof was mainly utilised in civil disputes. According to Bṛhaspati, immovable property might be acquired in seven ways—by learning, purchase, mortgage, valour, dowry, inheritance and by succession to property of kinsmen who had no issue.[278] Property thus acquired by one of these methods coupled with a legitimate title constituted proprietary right.[279] Possession without clear title could not mature into ownership.[280] Title and possession combined established proprietary right.[281] Nārada pointed out that one who pleaded mere possession without title was considered as a thief and should be treated accordingly.[282] According to *Mitākṣarā* ownership was established only when the transferor ceded his proprietary right.[283] He whose possession was continuous and unbroken for a period of thirty years could not be deprived of his property.[284] Kātyāyana, however, held that continuous possession for three generations established the right of ownership of the fourth generation.[285]

About the duration of possession the *Smṛti* writers and Law Digests vary in their opinion but it is clear that a long possession established the proprietary right over immovable property[286] and disputes arising out of property could be decided with the evidence of validity of the title of possession. But there were cases where possession was considered invalid. Thus, a property was not lost to the owner by mere possession if the possessor was his relative or a friend.[287] The *Smṛti Candrikā* quotes Pitāmaha in this respect to confirm the point.[288] Such wealth as was possessed by a son-in-law, a learned *Brāhmaṇa* or a king and his ministers did not become their legitimate property even after the lapse of a very long period[289] nor did a pledged, mortgaged, temple property, open and sealed deposit etc.[290] Female slaves could never be acquired by possession without a written title.[291] Morever, possession of the royal property, property of a *Brāhmaṇa*, an idiot, an infant,[292] a woman[293] did not create ownership without a legitimate title. Thus, sufficient protection was ensured by the authors in case of possession to avoid unnecessary harassment. Special care was given to minors, idiots and women so that they were not cheated unduly. In the like manner the right of a man who was not present was to be preserved.[294]

The trial was mainly based on the deposition of witnesses whose knowledge was based on what had been seen (*Śakṣin*), heard (*Deśya* or *Anubhāvin*) or understood by them (*Jñatṛ*).[295] He should be considered as a witness who had witnessed the deed with his own eyes, or personally heard another man speaking.[296] Witnesses were generally divided into two groups, appointed and unappointed witnesses.[297] A subscribing witness, one who has been reminded, a casual witness, a secret witness and an indirect witness were the five types of appointed witnesses.[298] The co-villagers, a judge, a king, one acquainted with the affairs of the two parties, one deputed by the claimant and members of the family in family disputes were unappointed witnesses.[299]

The minimum number of witnesses was three.[300] Alberuni, however, noticed that at least four witnesses were required.[301] Bṛhaspati suggested that nine, seven, five, four, three or even two witnesses were sufficient if they were learned *Brāhmaṇas*.[302] He emphasised that a single witness should never be entertained.[303] Sometimes single witness was heard. The law givers state that even one witness should be allowed in case of a man of extraordinary religious merit and when he was acknowledged by both the involved parties.[304] The deposition of a messenger, accountant, accidental witness, king and the chief judge was valid even if he was a single witness.[305] In serious and heinous offences (*Sāhasa*) also a single witness was permissible.[306]

According to Kātyāyana when witnesses residing in distant lands could not be produced in a court, their written evidence recorded before a learned man could be sent for deciding cases.[307]

Some qualifications of witnesses were scrutinised before a trial. As a general rule respectable, honoured, pious, and reliable persons of the same caste as the accused when possible were preferred for evidence.[308] Kālidāsa informs that in matters of evidence proper care was taken to enquire into the conduct of a witness. A virtuous witness was preferred to a deceitful man.[309] Generally female witnesses were preferred for disputes between women[310] and in disputes between members of groups such as *Śreṇis*, *Pugas* and companies of traders the heads of these associations were proper witnesses.[311]

In the judicial administration *Varṇa* distinction was quite evident. The *Śūdras* could only appear as witnesses for the *Śūdras*[312] and it was generally held that a litigant of lower caste should not establish his case by the evidence of witnesses of higher caste.[313] Nārada even included the *Śūdras* in the list of false witnesses[314] but elsewhere he made a contradictory statement that members of all *Varṇas* could appear as witnesses in the cases of all *Varṇas*.[315] It may be assumed that in ordinary cases caste distinction was followed but in serious cases the rigidity was relaxed.

Inadmissible witnesses (*Asākṣin*) have also been defined in legal writings.[316] Nārada divided them into five sorts. Some were inadmissible under a text of law (as ancient law said such), some on account of depravity (*Doṣa*), of contradiction (*Bheda*), of uncalled for deposition (*Sūcī*) and of intervening decease (*Mṛtāntara*).[317] Learned *Brāhmaṇas*, devotees, aged persons and ascetics were those incapacitated under a text of law though there was no special reason for it.[318] Their complete renunciation of material interests probably rendered them unfit to appear in a court of justice. One who had monetary interest (*Arthasaṁbandin*),[319] friends, enemies, relatives, slaves, servants, men of bad reputation, bad conduct or of despised position, thieves, robbers, gamblers, assassins, jugglers, public dancers, sellers of spirituous liquors, oil pressers, elephant drivers, leather workers, *Caṇḍālas*, *Śūdra* peasants, sons of *Śūdra* women and outcastes, intoxicated women, minor, lunatic, a careless man, distressed man, a village priest, one engaged in a long journey, a merchant who carried sea voyages, ascetic, sick, deformed, an impotent, a non-performer of religious rites, eunuch, an actor, a *Vrātya*, one forsaken by his wife, a student, sellers of roots, a bard, a rogue, meteorologist, astrologer, an avaricious or cruel man, or a cheat to mention a few were considered as incompetent witnesses.[320] Nārada clarified his point that a child would speak falsely from ignorance, a woman from lack of veracity, an imposter from habitual depravity, a relative from affection, an enemy from desire of revenge.[321] Therefore, they should be avoided. Medhātithi states that women were not totally disqualified but when both the parties in a dispute were males, male witnesses were usually preferred.[322]

In civil disputes witnesses were strictly examined but in criminal cases such strictness was not maintained.[323] In certain cases like adultery, theft, defamation and assault, however, anybody could act as a witness.[324] Even minors, women, old men and relatives were permissible.[325]

Unlike Nārada, Bṛhaspati allowed peasants, artisans, hired labourers, herdsmen, hunters, gleaners, diggers of roots and fishermen to act as witnesses in boundary disputes relating to houses and fields.[326] This undoubtedly was a significant development and reveals the growing importance of the class of artisans and peasants on whose labour the economic edifice of the society rested.

The rejection of unreliable witnesses was the primary concern of the opposite party but his protest should be raised in proper time and judges should examine it along with the reply of the opposite party.[327] The Hindu law givers took great care to impose on all the duty of giving true evidence. False witnesses were severely punished but at the same time defamation of faultless witness in court was considered an offence and monetary punishments were prescribed.[328] A witness when summoned had to appear in the court and non-appearance and refusal to give evidence was severely punished.[329]

It was the duty of the judges to examine the reliability of a witness in whom the signs of guilt-consciousness such as restlessness, perspiration, pallor, incoherent speech were evident.[330]

Certain rules were to be followed by a witness before giving evidence. He was to take off his footwear and head dress, raise his right hand and touch the auspicious things like gold, cowdung and *Darbha* grass,[331] and face east or north while deposing.[332] Both the parties were to be present at that time.[333]

The judges after having summoned all witnesses and bound them down firmly by an oath should examine them severally.[334] Certain exhortations were cited by the judge to the witness.[335] A *Brāhmaṇa* witness was exhorted to swear by truth, a *Kṣatriya* by his riding animal and weapons, a *Vaiśya* by a cow or a grain or gold, and a *Śūdra* by all sorts of crimes.[336] In specific cases witnesses could be examined jointly. It was the

duty of the Chief Judge or the Judges to ask questions to a witness.[337] Even the accused was also questioned.[338] The declarations of witnesses were generally written down[338a] and ordinarily cross-examinations were not made.[338b]

In case of conflicting evidence special attention was paid to find out the truth. Where there was conflicting evidence the statement of the majority were accepted but when the number of conflicting witnesses was equal, the testimony of those were accepted whose veracity was not liable to suspicion.[339] If the number of such witnesses was equal on both sides, the testimony of those who possessed superior memory were to be accepted.[340] Statement of qualified witnesses were preferred to majority of ordinary ones.[341]

If the statement of the witnesses, who had all been summoned for decision of the same cause did not agree they were rendered incompetent by contradiction.[342] Under such circumstances oral evidence became invalid. If the witnesses disagreed with one another as to place, time, age, matter, quantity, shape and species such statements were deemed absolutely meaningless.[343]

The party whose averments were supported in their entirety as true by witnesses won the suit while that whose claim was declared by witnesses as false lost.[344] No one was allowed to converse in secret with a witness summoned by his adversary, neither should he try to estrange him from the cause of his opponent by other means. For such practices he should suffer defeat.[345]

If a witness died or went abroad after having been appointed, those who had heard his deposition could give evidence.[346] Though normally quick procedure in judicial matter was expected yet no definite period was fixed for examining witness.[347] As long as witnesses were available they could be examined and allowed to depose.[348]

After obtaining statements from witnesses the Chief Judge and assessors (*Sabhyas*) had to decide the case.[349] Perjury was considered a serious offence. According to Bṛhaspati a false witness was equivalent to a slayer of a *Brāhmaṇa* and he was considered a greater sinner than the killer of an embryo or a destroyer of wealth.[350] This offence was punishable by law.[351]

The most interesting feature of ancient Indian jurisprudence is that law books mention only a single case of permissible perjury i.e. when the life of a man was at stake.[352] Yet the sin committed through such an untruthful act had to be expiated by performing penance.[353] It appears that great pain was taken by legalists to save human life whenever possible. It reminds of Kāmandaka who advised a king to avoid death sentence even for gravest offences except treason.[354]

Inferior to witnesses were the circumstantial evidence or argumentation.[355] It was based on careful consideration and coordination of different suspicious circumstances. The appearance was the first consideration here. For instance an adultery might be inferred from a man and woman caught in intimate scene.[356] A man seen with a flaming torch near the location could be inferred as an incendiary, a man caught with a weapon might be taken as a murderer, a man with stolen property as a thief, one with a spade in hand near the embankment as its destroyer, one with an axe in his hand as the destroyer of forests.[357] But proof by inference needed special caution and judges had to be conscious of it because in such cases treachery was not uncommon. Anybody might cause an artificial wound on his body and declare it as genuine and thus harass an innocent person.[358] Kauṭilya also warned against such possible dangers.[359] Thus a man could not be convicted as a thief on the strength of possession of stolen property but other factors should also be counted such as his extraordinary expenses, association with undesirable company etc.[360] Appearance might be misleading so the judges must apply all their reason (*Yukti*) to come to a legal decision[361] instead of taking any hasty action. The unjust death sentence against Cārudatta, the hero of the *Mṛcchakaṭika* was the result of a circumstantial evidence in which possession of ornaments etc. played significant part.[362]

When all these human evidences failed to lead to a clear decision divine proofs were applied to establish the truth. Jolly has defined divine judgment as "based on the belief in the direct intervention of the deity in order to expose the guilt or to vindicate the innocent and to expiate for the violation of law which has occurred".[363] Manu recommended that when

human proofs failed *Śapatha* or oath could be applied in search of truth.[364] According to *Mitākṣarā* in simple cases oaths were applied while ordeals were reserved for serious cases.[365]

Oaths were known from a very early period.[366]

The man who had to take the oath was to swear on his near and dear ones. He might touch the head or feet of a *Brāhmaṇa* or his wife or his son, or the feet of an image of a deity or take in his hand sacred grass or sesamum, silver, gold, earth, fire, water according as the value of the disputed property.[367] In the *Rājataraṅgiṇī* we find reference to oath by sacred libation.[368] These oaths were valid only if the swearer was not visited within a short period by misfortune or calamity like illness, burning by fire, loss of property, or death of a son etc.[369] The waiting period was one, three, five or more days according to the nature of the accusation.[370] Alberuni has also made mention of oaths as a part of trials.[371]

Ordeals (*Divya*) were also allowed as a mode of divine proof. In the *Vyavahāra Mayūkha* it has been defined as one "which decides a matter (in dispute) not determined by human proof".[372] It has been rightly remarked that difference between *Śapatha* and *Divya* was only a matter of degree and not of quality.[373] Ordeals were prevalent in judicial procedure from a very early time.[374]

Law givers have mentioned a large variety of ordeals. From the two major ordeals by water and fire[375] it developed into nine varieties.[376] Śūdraka[377] and Bāṇa[378] have referred to water, fire, poison and balance ordeals. In the *Rājataraṅgiṇī* also mention of trial by ordeal can be traced.[379] Hiuen-tsang noticed the prevalence of these four varieties of ordeals while he visited India.[380] Suleiman noticed two ordeals by hot iron and boiling water[381] while Alberuni in the 11th century found ordeals by poison, water, sacred libation, balance, hot gold piece and hot iron prevalent in India.[382]

Trial by ordeal was recognised by the Hindu law as a special procedure where ordinary method of trial was not available[383] and ordeals were generally adopted for serious offences.[384] As a general rule the defendant performed the ordeal but under special circumstances a plaintiff was also allowed to resort to it.[385]

There were, however, certain restrictions in regard to the application of various types of ordeals. All ordeals were not meant for all. In order to obtain proper result, the person who had to perform it was expected to possess sound health and spirit as any deficiency might vitiate the result of an ordeal.[386] It was also recommended that persons who were not eligible for some ordeals should at least be submitted to such an ordeal in which their feebleness was not a handicap.[387]

Kātyāyana prescribed that ordeal of fire should not be offered to blacksmiths and lepers, water to those who plied boats or who suffered from breathing difficulties, poison to the experts in incantations and Yogic practices, *Kośa* to drunkards, gamblers, atheists and persons fond of women. Similar provisions are also present in other legal writings.[388]

Ordeals were generally performed in the presence of King, the judge, learned *Brāhmaṇas* and the public.[389] Kātyāyana recommended some places like temple, royal gate, public place where four roads meet and Hall of justice as ideal for performing such an act.[390] An ordeal would become invalid when performed at improper place. Usually it was administered either at dawn or in the forenoon.[391] Some ordeals were also performed in late nights[392] and Sunday was the proper day for administering them.[393] According to Nārada, fire ordeal should be administered in rainy season, balance in winter, water in summer and poison in cool season.[394]

As ordeals were of divine character certain solemn ceremonies of religious nature were attached to them.[395] The Chief Judge by the order of the King had to conduct all the rites like a sacrificial priest. The Chief Judge and the *Śodhya* (who was to perform an ordeal) had to take religious dips, observe a fast and convoke all deities. A writing containing the plaint and a prayer was then fastened on the head of the *Śodhya*.[396]

The nine ordeals can briefly be discussed here. Ordeal of balance (*Tulā, Dhaṭa*) was generally given to women, minor, old and other disabled persons.[397] The person performing the ordeal was twice weighed on a balance. If he was found lighter than the previous weight, he was considered innocent. If he weighed higher he was regarded as guilty.[398] If he weighed the

same he should be weighed once more.[399]

In the ordeal of fire (*Agni*) a red hot iron ball had to be carried by the *Śodhya* to certain distance. He could, however, cover his hand with certain layers of pipul (*Aśvattha*) leaves. If his hand escaped burning he was declared innocent.[400] If he slipped the ball earlier the ordeal could be repeated.[401]

In the ordeal of water (*Salila*) the *Śodhya* had to immerse himself in a pond or river and he must keep himself under water until an arrow which was shot away at the same time was brought back by a fleet runner.[402] If the *Śodhya* was not seen or his head was only visible then he was innocent but if other parts of the body could be seen or if he floated up he was guilty.

In the ordeal of poison (*Viṣa*) the *Śodhya* had to take a certain quantity of poison and the action of the poison was watched for some time. If no signs of effect were visible, innocence of the *Śodhya* was established.[403]

It should, however, be noted that though these four major ordeals were also noticed by the Chinese pilgrim Hiuen-tsang, his description of these remarkably differs from the *Smṛti* rules. According to his statement, in the water ordeal the accused was put in a sack and a stone in another, then the two sacks were connected and thrown into a deep stream. If the sack containing stone floated and the other sank the guilt was established.

In the fire ordeal the accused had to kneel and tread on hot iron, to take it in his hand and lick it and his innocence was proved if he remained unhurt.

In the ordeal of balance the accused was weighed against a stone, if the latter was lighter the charge was false.

The poison ordeal required that the right hind leg of a ram be cut off, poison was smeared to it and the accused had to eat it. If the poison had no effect the innocence was declared.[404]

Other ordeals mentioned in the *Smṛtis* include the ordeal of sacred libation (*Kośa*) in which an image of a deity was bathed in holy water which the accused was given to drink. If within a certain period any misfortune visited him he was pronounced guilty.[405]

In the ordeal of rice grains (*Taṇḍula*) consecrated grains of rice had to be swallowed by the accused and spat out on a leaf. If blood was seen with them guilt was proved.[406]

In the ordeal of heated piece of gold (*Taptamāṣa*) the accused was asked to take a piece of gold out of a vessel full of heated oil and butter. He was acquitted if uninjured.[407]

Bṛhaspati has also referred to an ordeal by ploughshare (*Phāla*) in which the accused had to lick a red hot ploughshare. He was proved innocent if his tongue remained uninjured.[408]

Ordeal by lot (*Dharmādharma*) also found mention in the work of Bṛhaspati. According to it figures of *Dharma* (Justice) and *Adharma* (Injustice) had to be drawn on two leaves and invoked. Then they were enclosed in clay balls and placed in a jar unobserved. Accused was asked to take out one from the jar. If he took out *Dharma* he was acquitted.[409]

Though ordeals played a significant part in the judicial administration of ancient India, it is clear that they were not rational and as a result often real guilt was not detected because chance was the dominant note of performance of ordeals. Medhātithi has thus pointed out that ordeals are like magic and meant to frighten the parties to come out with truth.[410]

The final stage of judicial procedure was the verdict or *Nirṇaya*. After having carefully weighed evidence produced before the court the King or the Chief Judge with the help of his judges would decide on the success or defeat of the plaintiff. At tha time of discussion *Sabhyas* would ask the parties to leave the Hall.[411] Every assessor was expected to deliver a fair and free opinion untinged by love and hatred.[412] Nārada has pointed out that as an experienced surgeon extracts a dart by means of surgical instruments so the Chief Judge must extract the dart of injustice.[413] The judicial assembly had to reach a unanimous decision before pronouncing a verdict.[414] It should be noted that the judges were only to pronounce the opinion and recommend the punishment but the final verdict rested with King or his representative.[415]

Defeat of the losing party had to be declared and a document of victory (*Jayapatra*) had to be given to the winners.[416] A *Jayapatra* should generally contain the matter adduced to be proved, the answer, the judge's ruling as to

whom the burden of proof would lie, and his decision.[417] It should bear the royal seal and be signed by the Chief Judge and other members of the tribunal.[418] Kātyāyana recommended that the King and his judicial members should affix their *Svahasta* or signatures to it.[419] It was necessary to preserve such documents so that they could be produced or referred to whenever necessary.

Vijñāneśvara mentions another kind of document called *Hīnapatra*.[420] When a plaintiff was defeated for change of pleading or non-appearance or for non-prosecution, a document stating all these facts was issued to him. This was also required for future reference.

A successful party was congratulated by the judicial assembly[421] while the defeated party was inflicted with punishment. In civil disputes both the parties had to pay some money to the court. The defeated party paid in the form of fine (*Daṇḍam*) and the winners by way of fees (*Bhṛti*).[422]

Under certain circumstances a judgment could become null and a renewal or amendment of the procedure was allowed. When a person was defeated by his own conduct there was to be no renewal of judgment,[423] but if he was defeated through the false evidence or dishonest judgment or the procedure was conducted at improper time and place, or it was caused by the enemy or was decided by force, treachery or was begun by incompetent people, or conducted by another who was not appointed by the litigant then a retrial was permitted.[424] Even the discovery of a new evidence might cause renewal of the judicial procedure.[425] Above all, the right to appeal to the higher courts was recognised. King was, however, the highest appellate court and after his decision there was no appeal.

The duty of enforcing the judgment was entrusted to the lower officials.[426]

Nārada made a notable remark that when law-suits were decided properly the members of the court were cleared from the guilt. Their purity depended on the justice of the sentence passed by them.[427] Thus a sanctity was attached to the entire judicial process which was actually an intellectual procedure for deciding cases and settling disputes.

Footnotes

1. *Ency. Soc. Sc.*, VII-VIII, p. 464.
2. *Manu.* I. 81-82, *Gaut.*, VIII. 1, *Nār.*, I. 1, *Bṛhas.*, I. 1. Even the *Ṛg Veda* had envisaged the deterioration of virtue and morals. X. 10. 10.
3. *R.V.*, I. 68. 2, I. 105. 12, I. 136. 2, I. 142. 7, I. 164. 11, II. 28. 4, IV. 23. 8-10, X. 190. 1.
4. R.C. Majumdar and H.D. Pusalkar, *The Vedic Age*, Bombay 1951, p. 360.
5. *Śata.*, V. 4. 4. 7.
6. *Kaṭhaka Saṁ.* XXVII. 4.
7. *Manu.* VIII. 1, *Vaś.*, 16. 1, *Viṣ.*, III. 72, *Yāj.*, II. 1, *Nār.* I. 1. 2, *Śukra.*, IV. 5. 5.
8. *Gaut.*, X. 48, *Vaś.*, 16. 8, *Saṅkha-Likhita* quoted in *V.R.* p. 599.
9. *Gaut.*, XI. 19.
10. *C.I.I.*, 1, p. 123, *E.I.*, XX, p. 79.
11. *Yāj.*, II. 8, 305.
12. Ibid., II. 5.
13. Quoted in *V. Māt. MAS. B.*, III, p. 283.
14. *Manu*, VIII. 1.
15. *Yāj.*, II. 1.
16. *Manu*, IX. 252-53.
17. *R.T.*, VI. 64. *duhsaṁlaksyastu dharmosābadharmām vādhateñcasā | tiṣṭhannityamadhiṣṭhāya dāhyam kāṣṭhamivānalaḥ ||*
18. Ibid., VI. 62-63. *Sāyam hatāśam pratiśanna-mmayam cendumaṇḍalam | Svatejasā Saṁvibhajanpradī paijyotsnayāpyasau || tadutthāya yathā bhānurnihanti dhvāntamuddhatam | ananyakarmā dharmoyam tathādharmam vyapohati ||*
19. *A.S.*, III. 16, *Yāj.*, II. 5, *Medhātithi* on *Manu*, VIII. 8.
20. *Yāj.*, II. 23.
21. *Bṛhas.*, quoted in *Sm. Can.*, p. 9.
22. *Kāt.*, 30.
23. *Manu.*, VII. 22.
24. *Yāj.*, I. 361.
25. *E.I.*, XII, pp. 65, 78.
26. *Kām.*, II. 40, 42-43.
27. *C.I.I.*, III. Allahabad Pillar Inscription of Samudragupta. *Sādhvasādhūdaya pralayahetu.*
28. Ibid., Junagadh Rock Inscription of Skandagupta. *Śāśāsa dustan.*
29. *I.A.*, IV, p. 175.
30. *Raghu.*, I. 24. *Prajānām Vinayādhānādrakṣaṇādbharaṇādapi | Sa pitā pitarastāsām Kevalam janmahetavaḥ ||*
31. *Śak.*, V. 9. *niyamayasi vimārgaprasthitānāttadaṇḍaḥ, Praśamayasi Vivādam Kalpase rakṣaṇāya | atanuṣu vibhabeṣu jñātaya saṁbhivaktā stvayi tu parisamāptam bandhukṛtyam janānām.*
32. *Vikram.* I. 1.
33. *Y.C.*, III.
34. *Nītivākyāmṛta*, 17-18, 17. 38-39, 44.
35. *Matsya.*, 215. 75.
36. *Agni.*, 223. 10-12.
37. Elliot and Dowson, *History of India*, I, p. 4.
38. *D.C.* Ryder, pp. 211-12.
39. *Matsya.*, 225. 6.
39a. Ibid., 227. 217.
40. *A.S.*, 4. 13, *Yāj.*, II.
41. *Manu*, VIII. 336.
42. *Kād.* Kale, pp. 177-78.
43. *Nār.*, I. 41.

44. Ibid., XVIII 11.
45. *H.D.S.*, III, p. 241.
46. *A.S.*, I. 9.
47. *Manu.*, VIII. 1-3.
48. *Yāj.*, I. 359-60.
49. Romila Thapar, *Aśoka and the Decline of the Mauryas*, Oxford 1961, p. 103.
50. *N.P.*, 833. *Sabhāgatena draṣṭavya Vyavahārastathā Samaḥ.*
51. *Mahā.*, *Anuśāsana.* 6.38, *Rām.* VII. 53-54.
52. *Mṛccha.*, IX.
53. *Raghu.*, VIII. 18, XVII. 39.
54. Ibid., XVII. 39.
55. *D.C.* VIII. Viśruta Carita.
56. *Kāt.*, 61-62.
57. *P.M.* (B.S.S.), III, p. 23.
58. *Yāj.*, II. 1.
59. *Kāt.*, 55-56.
60. *Mālav.*, I. *Sarvajñasyāpyekākino nirṇayābhyupagamo doṣaya.*
61. *Nār.*, I. 35.
62. *Manu.*, VIII. 43, *Yāj.*, II. 5.
63. *Kāt.*, 27.
64. Ibid., 33-34, *Sm. Can.*, II, p. 28.
65. *Nār.*, I. 172-76.
66. *Bṛhas.*, I. 21-22, *Kāt.*, quoted in *Parāśaramādhavīya*, p. 17.
67. *Nār.*, quoted in *P.M.* p. 44.
68. Ibid., I. 79.
69. *Mṛccha.*, IX, *nirṇaye vayam pramāṇam śeṣe tu rājā.*
70. *R.T.*, VI. 14-41.
71. Ibid., VI. 42-61.
72. Ibid., IV. 82-108.
73. Ibid., IV. 108. *daṇḍadhāre tvayi kṣmāpa kṣitimetām praśāsati | ko bairasnehayoḥ pāramanā sādhyāvasīdati ||*
74. *Nār.*, I. 78.
75. Ibid., I. 7 quoted in *Sm. Can.* II, p. 19. *grāme dṛṣṭe puram yāyāt pure dṛṣṭe tu rājāni | rājñā dṛṣṭaḥ kṛdṛṣṭe vā nāsti tasya punarbhavaḥ ||*
76. *Bṛhas.*, II. 31.
77. *Bṛhas.*, quoted in *Vyavahārānirṇaya*, A.L.S. p. 15.
78. *Yāj.*, II. 3, *Kāt.*, 63, *Kāt.*, quoted in *Sm. Can.* II, p. 16.
79. *Nār.*, I. 35.
80. *Matsya.*, 215. 24-25.
81. *Nār.*, quoted in *Sm. Can.*, II, p. 14, *Kāt.*, quoted in *Vyavahāramātṛkā*, III, p. 274, *Mit.* on *Yāj.*, II. 3.
82. *Manu.*, VIII. 9, *Yāj.*, II. 3.
83. *Kāt.*, 67.
84. *Nār.*, Quot. 1.
85. *E.I.*, I, pp. 140 ff.
86. *Matsya.*, 215. 24-25.
87. K P. Jayaswal, Op. Cit. part II, p. 152.
88. *Yāj.*, II. 1-4, F.J. Monahan, *Early History of Bengal*, pp. 122-33.
89. *Mṛccha.*, IX.
90. Ibid., IX.
91. Ibid., IX.
92. *Bṛhas.*, I. 3.
93. *Manu.*, VIII. 10-11, *Yāj* , II. 3, *Nār.*, I. 111. 4.
94. *Bṛhas.*, I. 11.
95. Ibid., I. 13.
96. *Nār.*, I. III. 5.
97. *Kāt.*, quoted in *Parāśaramādhavīya*, p. 22.
98. *Manu.*, VIII. 20.
99. *Kāt.*, 55-56.
100. *Manu.*, VIII. 10, *Yāj.*, II. 2.
101. *Nār.*, I. III. 1.
102. Ibid., 2.
103. *H.D.S.*, III, p. 274.
104. *Kāt.*, 74-78.
105. *Viśvarūpa* on *Yāj.*, II. 1.
106. *Yāj.*, II. 4.
107. *D.C.*, VIII.
108. *Kāt.*, quoted in *V.Mat.* p. 283 *Aparārka* on *Yāj.* (*A.S.S.* p. 604, *J.R.A.S.B.* XVI, p. 116.

a Charter of Visnusena.
109. *Kāt.*, 81.
110. *Bṛhas.*, I. 6.
111. Ibid., I. 4.
112. *Bṛhas.*, quoted in *Viramitradaya*, p. 42.
113. *Bṛhas.*, I. 14.
114. Ibid., I. 17.
115. Ibid., I. 15.
116. *Kāt.*, 58-59. *Kulaśīlahayovṛttavittabadhirametsaraiḥ | baṇigbhiḥ syātkatipayaiḥ kulabhūtairadhiṣṭhitam | śrotārobaṇijastatra kartavyā nyāyadarsingḥ ||*
117. *Yāj.*, II. 2. *Lokarañjanārtham.*
118. *E.I.* XV, p. 115, XX, p. 63.
119. *Manu.*, VIII. 169.
120. *Asahāya's* commentary on *Ṛnadāṇa* V. 4. ed. by Kalyanabhaṭṭa.
121. Ibid., V. 4.
122. *Śukra.*, IV.5. 114-115. *Vyavahārānabhijñena hi anyakāryakulenavā | Pratyarthinārthinā tajña kāryaḥ pratinidhistathā | Lobhena tvanyathā Kurvanti-Yogī doṇḍamarhati |*
123. Ibid., IV.5. 114-117.
124. A.S. Altekar, *State and Government in Ancient India*, Delhi 1958, p. 259.
125. *Bṛhas.*, I.3.
126. Ibid., I.18.
127. *Vikram.*, V.
128. *Raghu.*, I. XIV.24.
129. *Bṛhas.*, I.19.
130. *Kād.*, para 85.
131. *Mṛccha*, IX.
132. *Bṛhas.*, I.16.
133. *Mṛccha.*, IX.
134. *M.A.S.I.*, No. 66, p. 53.
135. A.S. Altekar, *State and Government*, p. 142.
136. *A.S.*, 3.9.
137. *Yāj.*, I.30. *nṛpeṇādhikṛtāḥ pugāḥ Śreṇayohatha-Kulāni Ca | pūrvam pūrvam guru jñeyam Vyavahāra bidhaunṛnam ||*
138. *Mit.* on *Yāj*, I.30.
139. *C.I.I*, III, pp. 29-31.
140. *Nār.*, I.7.
141. *Kāt.*, 225, 682.
142. *Vyavahāraprakāśa* (part of *Viramitradaya, C.S.S.* p. 30.
143. *Bṛhas.*, I.28.
144. Ibid., I.28-30.
145. Ibid., I.25.
146. Ibid., I.26.
147. Ibid., I.27.
148. *Yāj.*, II.150-52.
149. *A.S.*, 3.9.
150. *D.C.* Ryder, p. 180.
151. *Bṛhas.*, XIV.7.
152. Ibid., XVII.17.
153. *Nār.*, X.6.
154. *Bṛhas.*, XVII. 18.
155. *Nār.*, X.2-3.
156. *Kāt.*, 670.
157. Ibid., 668-669.
158. Ibid., 670.
159. *Ency. Soc.Sc.* VII-VIII, p. 217.
160. S.K.Das, *Economic History of Ancient India*, Calcutta, p. 2
161. *Bṛhas.*, XVII.19.
162. *C.I.I.* III, p. 70.
163. Ibid., III, pp. 37-38.
164. Ibid., IV, pp. 33-34.
165. *E.I.*, I, p. 175 (*Kullapāla Mahattaka*).
166. Ibid., I, p. 174 (*Tāmbolika-maharā*).
167. Ibid., I,p. 17 (*Mālika-maharā*).
168. *Sm. Can.* III, pp. 530 ff.
169. *Aparāka's* Comm. on *Yāj.* p. 794.
170. *Bṛhas.* XVII.9-10.
171. Ibid., XVII.9-10.
172. Ibid., XVII.8.
173. *E.I.*, VII, pp. 177, 188, 189.
174. *E.I.*, VII, p. 183, VIII, p. 39.

I.A., XVI, p. 254.
175. *A.S.*, 3.10.
176. *Agni.*, 165.11-12.
177. *H.C.*, VIII. *Pañcamahābhūta pañcakulādhiṣṭhitāntaḥkarṇa vyvahāra-darśena nipuṇaḥ.*
178. *E.I.*, XVIII, pp. 76-77.
179. *Nār.*, Quot. 1.5.
180. *S.I.I.*, 1900, Nos. 64, 70, 1902, No. 223, 1906, No. 80.
181. *A.S.*, 3.10, 4.4.
182. *Manu.*, VIII.41, *Gaut.*, XI.21, *A.S.* 2.7. *Kāt.*, 46-50, *Mahā.*, XII. 36. 19.
183. *R.V.*, 8.30.3.
184. *Manu.*, VIII.51.
185. *Kāt.*, quoted in *Sm. Can.* II, p. 57.
186. *Viṣ.* VI. 20-21, *Yāj.*, II.42.
187. *Yāj.*, II.11.
188. *Nār.*, IV.132.
189. *Manu.*, VIII.139.
190. *Yāj.*, II.33, 188.
191. Ibid., II.26.
192. Ibid., II.171.
193. *Yāj.*, II. 4, 305 f, *Nār.* I. 1.65 f, *Bṛhas.*, VI.5 f.
194. *Yāj.*, II.18.
195. *Nār.*, I. 1.4.
196. *Śukra.*, IV. 5.6., *Mṛccha.*, IX.
197. *Śukra.*, IV.5.67.
198. *Nār.*, I. 1.6.
199. *Mṛccha.*, IX, Sachau, II, p. 158.
200. *Kāt.*, 86-88.
201. *Mṛccha.*, IX.
202. *Nār.*, I.2.18, Sachau, II, p. 158.
203. *Bṛhas.*, III.15.
204. *R.T.*, VIII. 158.
205. *Kāt.*, 136.
206. *Nār.*, I. 2.8.
207. *Kāt.*, 140, quoted in *Mitākṣarā* on *Yāj.*, II.6.
208. *Nār.*, I. 2.13.
209. *Bṛhas.*, quoted in *Sm. Can.* II.37.
210. *Yāj.*, II. 32.
211. Ibid., II. 32.
212. *Manu.*, VIII. 24, *A.S.*, I.19.
213. *Kāt.*, 122.
214. *Yāj.*, II. 32, *Nār.*, Quot. 1.6, *Kāt.*, 88.
215. *J R.A.S.B.*, XVI, p. 116.
216. Ibid., p. 116.
217. *Nār.*, I. 1.53.
218. *Mit.* On *Yāj.*, II.5.
219. Ibid., II.5. Vide *Vyavahāra Mayūkha* ed. by P.V. Kane, pp. 9-10.
220. *Nār.* I.1.59, *Bṛhas.*, II.35, *Kāt.*, 100-101.
221. *H.D.S.* III, p. 287.
222. *Nār.*, I.2.22.
223. Ibid., I. 2.23.
224. *Kāt.*, 93-95, *Sm.Can.*, II, p.34.
225. *Nār.*, I. 1.47, *Mit.* On *Yāj.*, II.5.
226. *Nār.*, I.1. 47-54, *Kāt.*, 103-110.
227. *Nār.* I. 1. 49.
228. *Yāj.*, II.10.
229. *Nār.*, I. 1. 48-54, *Kāt.*, 117, quoted in *Mitākṣarā* On *Yāj.*, II. 10.
230. *Kāt.*, 119.
231. *A.S.*, 3.1, *Yāj.*, II.6, *Kāt.*, 127-28.
232. *Bṛhas.*, IV.1.
233. *Yāj.*, II. 12.
234. *Nār.*, I. 1.45.
235. *Bṛhas.*, IV.5.
236. Ibid., IV.6.
237. *Kāt.*, 145-58.
238. *Kāt.*, 339, quoted in *Sm. Can.* II, p. 92.
239. *Bṛhas.*, IV.7.
240. Ibid., IV.8.
241. Ibid., III.4, IV.9.
242. *Kāt.*, 144.
243. *Nār.*, I. 1.2-6.
244. *Kāt.*, 172. Quot. 3.1-7.
245. *Nār.*, I.2.32 f. Quot. 3.10.

246. *Yāj.*, II. *Nār.*, I.55, *Kāt.*, 163.
247. *Yāj.*, II.29, *Nār.*, IV.93.
248. *Bṛhas.*, V.1.
249. *Mit.* On *Yāj.* II.7, quoted in *Hārīta* I.29.
250. *Bṛhas.*, V.13.
251. Sachau, II, p. 158.
252. *Mṛccha.*, IX.
253. *Yāj.*, II.22. *Nār.*, II.28-29, IV.69, *Bṛhas.*, V.17.
254. *Bṛhas.*, V.18.
255. Watters, I, p. 171.
256. *Yāj.*, II.22, *Nār.*, I.247, *Kāt.*, 217.
257. *Kāt.*, 218-19, *Mit.* on *Yāj.*, II.22.
258. *Nār.*, IV. 75.
259. *Nār.*, IV. 70-71, *Bṛhas.*, quoted in *V.P.* p. 141.
260. *Nār.*, I.X. 135.
261. *Mit.* on *Yāj.*, II.84.
262. *Bṛhas.*, quoted in *V.P.* p. 141, *V. Mayūkha*, p. 24.
263. *Yāj.*, II. 89.
264. Ibid., II.84-87.
265. *Nār.*, I.10.137, *Bṛhas.*. VIII. 22-23, *Kat.*, 271.
266. *Kāt.*, 273.
267. *Bṛhas.*, VIII.31. *Kāt.*, 306-307.
268. *Kāt.*, 510.
269. *Yāj.*, II. 91 ff.
270. *Kāt.*, vide *J.A.H.R.S.*, II, p. 125.
271. *Bṛhas.*, VIII.26, 29
272. *Nār.*, I. 10.143.
273. *Manu.*, IX.232, *Yāj.*, II.295, *Matsya*, 227.202.
274. *R.T.*, VI. 29, 39.
275. *Nār.*. I.146.
276. Ibid., I. 143-44.
277. Ibid., I. 143-44, *Bṛhas.*, VIII. 20.
278. *Bṛhas.*, IX.2. Vide *Nār.*, quoted in *Sm. Can.*, II, p.70.
279. *Bṛhas.*, IX.3.
280. *Bṛhas.*, quoted in *Sm. Can.* II, p. 70.
281. *Yāj.*, II. 27, *Nār.*, IV.77.
282. *Nār.*, IV.86-87.
283. *Yāj.*, II.27.
284. *Bṛhas.*, IX.7.
285. *Kāt.*, 327.
286. *Medhātithi* on *Manu*, VIII. 148.
287. *Bṛhas.*, IX.11. *Kāt.*, 335.
288. *Pitāmaha* quoted in *Sm. Can.*, II. p. 69.
289. *Bṛhas.*, IX.12.
290. *Kāt.*, 330.
291. *Bṛhas*, IX.21.
292. *Yāj.*, II.25, *Bṛhas.*, IX.21, *Kāt.*, 330.
293. *Yāj.*, II.25, *Nār.*, IV.83.
294. *Nār.*, Quot. 4.7-10, *Kāt.*, 331-334.
295. *Nār.*, I.147.
296. Ibid., I.149.
297. Ibid., I.149-151.
298. Ibid., I.150.
299. *Nār.*, I.151-152, *Bṛhas*, VII. 1-17.
300. *Manu.*, VIII.60, *Yāj.*, II.69, *Nār.*, IV.153.
301. Sachau, II, p. 158.
302. *Bṛhas.*, VIII.16.
303. Ibid., VIII.16.
304. *Yāj.*, II.72, *Nār.*, IV. 192.
305. *Bṛhas.*, VII. 18.
306. *Vyāsa* quoted in *Sm. Can.*, II, p. 76.
307. *Kāt.*, 352.
308. *Manu*, VIII. 62-63, *Yāj.*, II. 68, *Nār.*, I. 1. 153-54, *Kāt.*, 347.
309. *Śak.*, V.5.
310. *Nār.*, I.4.155, *Kāt.*, 348.
311. *Nār.*, I.4.155, *Kāt.*, 349-50.
312. *Yāj.*, II 69, *Nār.*, I. 154, *Kāt.*, 341.
313. *Kāt.*, 348.
314. *Nār.*, I.178, 181-185.
315. Ibid., I.154.

316. *Manu*, VIII. 64-67, *Yāj*., II. 70-71, *Nār*, I 4. 177-187, *Bṛhas*., VII. 29-30, *Kāt*., 360-64.
317. *Nār*., I.157.
318. Ibid., I.158.
319. *Mit*. On *Yāj*., II. 70-71, *Kāt*, 361.
320. *Nār*., I. 177-190.
321. Ibid., I.191.
322. *Medh*. on *Manu*, VIII.68.
323. *Kāt*., 365-366, *Sm.Can*., II, p.75.
324. *Yāj*., II.72.
325. *Kāt*., 367.
326. *Bṛhas*., XXI. 26-27.
327. *Bṛhas*., VII. 24-26. *Kāt*, quoted in *Sm. Can*., II, p. 83.
328. *Bṛhas*., VII. 24.
329. *Nār*., I.4, 161, *Bṛhas*., VII.31.
330 *Nār*., I. 193-96, 230-34.
331. *Bṛhas*., VII. 302, *A.S*., 3.11.
332. *Kāt*, quoted in *Mit*. On *Yāj*., II.73.
333. *Manu*, VIII. 79-80, *Yāj*., II. 73.
334. *Nār*., I.4.198. *Kāt*., 344-345.
335. *Yāj*., II.73-75, *Nār*., IV.200, *Bṛhas*, VII. 19-20, *Kāt*., 343.
336. *Nār*., I.4.199.
337. *Mṛccha*, IX.
338. Ibid., IX.
338a. *Kāt*., 392.
338b. Sachau, II, p. 158.
339. *Manu*, VIII. 73, *Yāj*., II. 78, *Nār*., I. 4. 229, *Bṛhas*., VII. 35, *Kāt*., 405.
340. *Nār*., I. 4. 229.
341. *Yāj*., II. 72.
342. *Nār*., I. 4. 160, *Kāt*., 359.
343. *Nār*., I. 4. 233.
344. *Yāj*., II. 79, *Nār*., II. 27, *Bṛhas*., quoted in *Sm. Can*., II, p. 91.
345. *Nār*., I. 165.
346. Ibid., I. 166.
347. Ibid., I. 170.
348. *Mit*. On *Yāj*., II. 80.
349. *Kāt*., 340.
350. *Bṛhas*., VII. 21.
351. *Yāj*., II. 81, *Kāt*., 407.
352. *Manu*, VIII. 104, *Viṣ. Dh. S*., VIII. 15, *Gaut*., 13. 24-25, *Yāj*., II. 83, *Bṛhas*., VII. 34.
353. *Yāj*., II. 83, *Bṛhas*., VII. 34.
354. *Kām*., XIV. 16.
355. *Bṛhas*., V. 18.
356. *Yāj*., II. 283.
357. *Nār*., I. 4. 172-76.
358. Ibid., I. 4. 176.
359. *A.S*., 4. 8.
360. *Nār*., App. 8-12.
361. Ibid., I. 30, 40, 68-73, 238 f.
362. *Mṛccha*., IX.
363. J. Jolly, *Hindu Law and Custom*, Calcutta 1928, p. 310.
364. *Manu*, VIII. 109.
365. *Mit*. On *Yāj*., II. 96.
366. *R.V*., 7. 104. 15-16.
367. *Bṛhas*., X. 6 f.
368. *R.T*., VIII. 2237.
369. *Manu*, VIII. 115.
370. *Mit*. On *Yāj*., II. 113.
371. Sachau, II, p. 158.
372. *H.D.S*., III, p. 363.
373. J. Jolly, Op. Cit. p. 312.
374. *Chān. Up*., VI. 16. 1, *Āpas*., II. 11, 29. 6.
375. *Manu*., VIII. 114 f.
376. *Bṛhas*., X. 4-5.
377. *Mṛccha*., IX. 43.
378. *Kād*., para 47.
379. *R.T*., IV. 44, V. 326.
380. Watters, I, p. 171.
381. J. Jolly, p. 316.
382. Sachau, II, p. 158.
383. *Kāt*., 217.
384. *Nār*., I. 249, *Bṛhas*., X. 2.
385. *Yāj*., II. 95, *Nār*., I. 257, 265, *Kāt*., 411.
386. *Nār*., I. 256, 313, *Kāt*., 427.
387. *Yāj*., II. 98, *Nār*., I. 256, *Kāt*., 427.
388. *Kāt*., 428 ff, *Nār*., I. 255, 332, *Viṣ. Dh. S*. IX. 25. 29.

389. *Yāj*., II. 97, *Nār*., I. 268, 320.
390. *Kāt*., 434-435, 437.
391. *Nār*., I. 268, 320, *Yāj*., II. 97.
392. *Mit*. On *Yāj*., II. 97.
393. Ibid., II. 97.
394. *Nār*., I. 254.
395. *Pitāmaha*, II. 26-28.
396. *Nār*., II. 195, 276, *Mit*. On *Yāj*., II. 97, 99.
397. *Yāj*., II. 98.
398. Ibid., II. 101-102, *Nār*., I. 83, 278-79.
399. *Bṛhas* , X. 19.
400. *Yāj*., II. 104.
401. *Kāt*., 441, *Yāj*., II. 107.
402. *Yāj*., II. 108.
403. Ibid., II. 111, *Nār*., I. 325.
404. Watters, I, p. 171.
405. *Yāj*., II. 108-113, *Nār*., I. 330, *Bṛhas*, X. 24.
406. *Bṛhas*., X. 25.
407. Ibid., X. 26-27.
408. Ibid., X. 28-29.
409. Ibid., X. 30-33.
410. *Medh*. On *Manu*, VIII. 116.
411. *Nār*., II. 42.
412. Ibid., I.15. Courts of Justice.
413. Ibid., I. 16.
414. Ibid., I. 17.
415. *Mṛccha*., IX.
416. *Nār*., II. 41-43.
417. *Bṛhas*., VIII. 19, *Kāt*., 259, 265, *Mit*. On *Yāj*., II. 91.
418. *Bṛhas*., VIII. 19.
419. *Kāt*., quoted in *Sm. Can*., II, p. 130.
420. *Mit*. On *Yāj*., II. 91.
421. *Kāt*., quoted in *Sm. Can*. II. p. 57.
422. *Manu*., VIII, 139, *Yāj*., II. 18, *Nār*., II. 5.
423. *Nār*., II. 40.
424. *Manu*., VIII. 117, *Yāj*., II, 31 f, *Nār*., I. 43, Quot. 1. 14.
425. *Nār*., I. 62f.
426. *Viṣ*., 16. 11, *Nār*., I. 46, *Mṛccha*., IX.
427. *Nār*., I. 7. Courts of Justice.

6

SOURCES OF HINDU LAW

THE SANSKRIT WORD USED FOR LAW IS *DHARMA* which has a very wide connotation. The term *Dharma* means one which binds people.[1] Sir Monier Williams used the term *Dharma* to imply that which is established or firm, steadfast decree, statute, ordinance, law, usage, practice, customary observance or prescribed conduct, duty, right, justice, virtue, morality and religion.[2]

The concept of *Dharma* occurred as early as the *Ṛg Vedic* perid where the Varuṇa was referred to as the upholder of *Dharma*,[3] and to the *Ṛg Vedic* people the term denoted some codes of conduct. The Vedic Indians had some conceptions of law as the standard of conduct and to them adultery, seduction, sorcery were equivalent to violation of rules of conduct. While the concept of *Ṛta* was credited to regulate the cosmic phenomena. In the *Ṛg Veda* the term *Ṛta* occurs frequently to mean a divine cosmic order by which the universe and even the gods were governed.[4] The *Varuṇa* was also known as the guardian of *Ṛta* (order) or *Ṛtasya* Gopa.[5] Thus the two conceptions of *Dharma* and *Ṛta* were correlated and guided the life of the Vedic people.

Coming to the age of the *Śatapatha Brāhmaṇa*, however, a change of attitude is discernible. Here the temporal ruler is introduced as the protector of law though not the creator and the *Varuṇa* still continued as the guardian of law or *Dharmapati*.[6] The King thus only enforced law wherever necessary.

With the evolution of complex society and subsequent

development of caste system the *Brāhmaṇas* also claimed the privilege as upholders of law along with the *Kṣatriyas* or the kings.

The *Bṛhadāraṇyaka Upaniṣad*, however, advocated the divine origin and majesty of law or *Dharma*. It stated that He the Creator did not feel satisfied that creation of the *Varṇas* was enough to provide the stability to the society. So he created the *Dharma* which is to serve as the might of the mighty. There is nothing higher than the *Dharma*, through the majesty of which even the weak could prevail over the mighty as much as the King himself prevails over a wrong doer. Thus what is *Dharma* is Truth (*Satya*). He who speaks the truth upholds *Dharma* and he who upholds *Dharma* speaks the truth. In other words the two (*Dharma* and *Satya*) are synonymous.[8]

It would thus appear that the *Bṛhadāraṇyaka Upaniṣad* envisaged the divine as well as a metaphysical origin of law. It has been remarked that "the Ṛshis of the Upaniṣads are seers of truth, therefore, the truths which they come to know by intuitive processes are identical with the commands of the creator. Hence there is no incoherent contradiction between these two conceptions of the origin of law."[9]

All the authors of the *Dharma Sūtra* period, however, considered the *Veda* as the first and foremost source of Hindu law. The *Āpastamba Dharmasūtra* pointed out that the *Veda* alone was the real source of *Dharma*.[10] Gautama laid down that the "Veda is the source of the Sacred Law".[11] Vaśiṣṭha added that the Sacred Law was settled by the Revealed Texts.[12] Baudhāyana also accepted the *Veda* as the real source of *Dharma* or law.[13]

In the age of the *Smṛtis* also the theological origin of the law was recognised. Manu emphasised the divine origin of *Dharma*. He stated that *Dharma* is the son and creation of the Lord[14] and considered the *Veda* as the main source of law.[15] According to Yājñavalkya the primary basis of law was *Śruti* or the *Veda*.[16] The *Rājadharmānuśāsana* section or the *Śānti Parvan* of the *Mahābhārata* also admitted the divine origin of law. The commentators like Medhātithi affirmed the *Veda* as the root or the cause of *Dharma*.[17] Devanabhaṭṭa held the *Veda* as the authoritative source of law as it is independent of human

authorship.[18]

Though the *Veda* was considered the paramount authority of Hindu law it was not the only source. Hindu legal writers have also made mention of the *Smṛtis* (Recollections) as the secondary source of law. Vedic rules were not sufficient to cope with the complexities of a growing society which gave rise to a number of *Smṛtis* compiled and promulgated from time to time to suit the changing pattern. Kumārilabhaṭṭa remarked—"In as much as these *Smṛtis* have emanated from human authors and are not eternal like the *Veda*, their authority cannot be self-sufficient. The *Smṛtis* of Manu and others are dependent upon the memory of their authors, and memory depends for its authority on the truthfulness of its source; consequently the authority of not a single *Smṛti* can be held to be self-sufficient, like that of the *Veda*, and yet, in as much as we find them accepted as authoritative by an unbroken line of respectable persons learned in the *Veda*, we cannot reject them as absolutely untrustworthy. Hence it is that there arises a feeling of uncertainty regarding their trustworthy character."[19]

In the *Mīmāṁsā-sūtra* of Jaimini there is a suggestion that as the *Veda* is the primary and only trustworthy source of law,[20] *Smṛtis* should be relied upon provided they are not contrary to the Vedic declarations. Baudhāyana considered the *Smṛti* as one of the sources of law.[21] Parāśara gave second position to the *Smṛti* as the source of Hindu law.[22] Āpastamba,[23] Vaśiṣṭha[24] and Gautama[25] have also made specific mention of the *Smṛti* as one of the sources of law.

Manu also accepted the importance of *Smṛtis* as the source of law.[26] While explaining a verse of Manu, Medhātithi pointed out that Manu has used the terms *Smṛti* (Recollection) and *Śīla* (proper feeling) together to denote "Conscientious Recollection". The authority of *Smṛti* becomes qualified only when the Recollections are made during the perfect state of mind and not at the time of mental disturbances. Kulluka also comments that the *Smṛti* of persons learned in the Veda is only authoritative.[28]

It was, however, a dangerous principle when the authors of the *Dharmasūtras* bestowed the authority of declaring law upon any and every *Brāhmaṇa* who was a *Śīla*[29] or a *Śiṣṭa*,[30]

because individual reason or intuition was not always sufficient to interpret the law. So, to bring order out of confusion Hindu institution of *Pariṣad* was evolved. *Pariṣads* were assemblies of three, five or ten persons versed in the *Veda* constituted to settle what was law or what was not. Gautama, Vaśiṣṭha, Baudhāyana, Yājñavalkya, Parāśara and others refer to *Pariṣads*[31] and Āpastamba says "the authority (for these duties) is the agreement of those who know the law".[32] So it appears that the ancient Indians believed that the law was founded on some sort of agreement and recognition though it was primarily of divine origin.

Yājñavalkya in his five fold sources of law included *Smṛti*.[33] Vijñāneśvara defined *Smṛti* as *Dharmaśāstra*. So was the opinion of Viśvarūpa.[34] Aparārka considered *Smṛti* as that ordinance which in matters of *Dharma* had its source in the *Veda*. Therefore, the authority of *Smṛti* was adulterated and not so paramount as *Śruti* or the Revealed Texts. But one should follow what has been *Smārtam* or recollected by persons learned in the *Vedas* and refrain from doing things forbidden by them.[35]

The *Smṛti Candrikā* points out that the *Smṛtis* have their sources in the *Veda* is deduced from the fact that they expound what is contained in the *Veda*. But the question arises that if *Smṛtis* expound what is contained in the *Veda* then the *Veda* itself is sufficient; where is the place for *Smṛti*? The *Smṛti Candrikā* quotes Marīci to answer this—"the requisite texts of the Vedas are difficult to understand and are scattered about in various places, and all these are collected and explained by the Smṛtis".[36]

Kumārilabhaṭṭa contends that the *Smṛtis* were not mere compilations by the sages from their recollections of lost Vedic texts but mainly manuals collecting Vedic rules which were scattered about in the various *Śākhās* (branches) and compiled for the guidance of men.[37] He further adds that as the *Smṛtis* are based on *Śruti* the conflict between the two should be regarded as conflict between the two contrary or contradictory *Śrutis* and the conflict between the two should be looked upon as one of *Vikalpa* or option (i.e., either is authoritative).[38]

There are, however, divergences in different *Smṛtis* and as all the *Smṛtis* have equally recognised authority they had to be properly reconciled by a spirit of adaptation. This trend to adaptability is discernible in the fact that while every *Smṛti* deals with what the *Smṛtikāra* or the author considers as perfect or ideal *Dharma*, there are sections for *Āpaddharma* or rules to be followed under difficult circumstances.[39] So the laws of normal condition may not fit in during any emergency. *Smṛtis* were also not sufficient to satisfy the needs and changes of time. So *Sadācāra* or good custom or practice was also included in the list of sources of law. Gautama recognised the utility of customs.[40] Āpastamba referred approved customs of the Aryans as a source of law.[41] Vaśiṣṭha[42] and Baudhāyana[42a] placed *Śiṣṭācāra* or good custom only after *Śruti* and *Smṛti* as the source of law. Manu gave primary position to *Śruti*, *Smṛti* and custom in his enumeration of sources of law.[43] Yājñavalkya was more exhaustive in his enumeration and *Sadācāra* ranked third in his list.[44]

From a very early time there was a tendency to attach special importance to customs which could even override the *Smṛtis*. According to Max Müller the earliest tendency of this is visible in an attempt to place *Kalpasūtras* next in position to customs. He translates *Āśvalāyana Gṛhya Sūtra* text—*atha Khaluccāvattā jānapada dharmā grāma-dharmāśca tānvivāha pratiyādyattu Samānam tadvakṣyāmaḥ* as "now the customs of countries and places are certainly manifold. One must know them as far as marriage is connected. But we shall explain general custom." So the rules of *Smṛti* were also laid down for general applications but could be overridden by the customs provided the latter had no conflict with the *Śruti*.[45]

Medhātithi on Manu[46] explains *Sādhunām Ācāra* as practices of good men which was interrelated with "*Vedavidām*" or learned in the *Veda*. These two qualifications together comprised *Sadācāra*. Thus, when in any action *Śruti* and *Smṛti* injunctions were not available but the *Sadācārī* (qualified man) considered the action as *Dharma* or right, then that action was regarded as "enjoined in the Veda".

Viśvarūpa on Yājñavalkya[47] thinks that *Sadācāra* stands for those religious or spiritual acts that are performed by men

free from selfishness, hypocrisy and other defects. *Mitākṣarā* also considered *Sadācāra* as the practice of the cultured and not of the uncultured. The same was the *Śiṣṭācāra* of Vaśiṣṭha and Baudhāyana. While Vaśiṣṭha defines a *Śiṣṭa* "as a man whose heart is free from desire",[48] Baudhāyana considers those as *Śiṣṭas* "who are free from envy, free from pride, contented with a store of grain sufficient for ten days, free from covetousness and free from hypocrisy, arrogance, greed, perplexity and anger, who in accordance with the sacred law have studied the Veda together with its appendages, know how to draw inferences from that and are able to adduce proofs perceptible by the senses from the revealed texts."[49]

The function of custom or practice in the sphere of law was of no less significance. Vijñāneśvara recommended that the *Dharma* which was condemned by the people should not be followed.[50] The *Smṛti* writers made specific mention of the countries of whose customs were to be followed. For instance, Manu referred to the customs of *Āryāvarta* or *Brahmāvarta*.[51] Same was the opinion of Yājñavalkya.[52] According to Vaśiṣṭha, however, the customs of Āryāvarta must be recognised everywhere.[53]

Nārada says that when it is impossible to act upto the precepts of sacred law, it becomes necessary to adopt a method founded on reasoning because custom decides everything and overrules the sacred law.[54] Asahāya comments on this verse that both the practice of *Niyoga* (or raising offspring to a deceased or disabled brother) and remarriage of widow are sanctioned by the sacred law books but these two practices are not approved by the custom.[55]

Diversity of customs was also recognised in Hindu law. Bṛhaspati felt the need of preserving the usages of each country, caste and family intact in legal matters, otherwise the people would rise in rebellion and would disobey their rulers.[56] He noted that the maternal uncle's daughter is taken in marriage among the 'twice-born' inhabitants of the south, in the Madhyadeśa or central country they eat cows, the inhabitants of the east are fond of fishes, in the north women take alcoholic drinks,[57] and the people of Khaśa marry widow of a brother.[58] Thus customs or usages which differ from place to place

must be recognised. Manu recommended that *Jātidharmas* (rules of castes), *Janapadadharmas* (local customs), *Śreṇīdharmas* (customs of guilds) and *Kuladharmas* (family traditions) were also to be counted.[59] Thus practices or customs are trustworthy guides when prevalent among the cultured and are not opposed by the *Śruti.*

Sadācāra or sacred usages apart, there were also a range of usages which were practised by men of different communities. These customs were not practices of men of good learning but of different social organisations and as such can be taken for secular custom which played a significant role in moulding the law proper or the *Dharma* which is believed to be derived from the *Vedas* and other auxiliary sources. But side by side there developed secular laws which were based on customs and usages and outside the pale of sacred law. Most of the *Smṛtis* emphatically referred to the lands of the *Āryas* where the *Smṛti* rules were to be applied and followed and there were places where the Aryans were forbidden to dwell.[60] So a King was required to follow the customs and rules of different castes and regions.[61] Yājñavalkya states that even if a King conquers a new country he must follow the rules and usages prevalent over there.[62] Equally emphatic was Viṣṇu who remarked that a King should not discard or disrespect rules and usages of a country even after having conquered it.[63] The *Smṛti* works recognised a group of people who existed outside the pale of sacred law and they were governed by a body of rules different from the sacred law. Manu has referred to the laws of *Deśa, Jāti, Kula, Pāṣaṇḍa, Gaṇa,*[64] *Grāma* and *Saṅgha.*[65] Medhātithi interprets the *Pāṣaṇḍas* as those who practised the rules forbidden in the sacred laws, the *Gaṇas* as assemblies of artisans and herdsmen, the *Grāma* as the assembly of members of different villages and *Saṅgha* as a community of members bound by a common tie though coming from different walks of life.

Yājñavalkya further mentioned about the rules of *Śreṇīs, Naigamas, Pākhaṇḍis, Gaṇas,* etc. which were to be strictly maintained.[66] Vijñāneśvara interprets the *Śreṇīs* as assemblies of persons following same craft, *Naigamas* as assemblies of heretics, like the *Pāśupatas* who though acknowledged the

authority of the *Veda* would not admit its eternal existence, the *Pākhaṇḍi* as assemblies of those who deny Vedic authority like the Buddhists and *Gaṇa* as a term for all associations including the assembly of men following the same profession. In the work of Nārada also we come across the name of such communities as associations.[67] For instance, he refers to the *Pūgas*, *Vrātas* etc. The *Pūga* has three interpretations. Some think it as "companies of traders or others" while others denote it as "associations of persons differing in caste, whose mode of subsistence is not fixed". The Viramitrodaya interprets it as referring to riders on elephants, horses etc.[68] *Vrāta* has been interpreted as a troop of soldiers or a multitude of united men armed with various weapons and the *Gaṇa* an assemblage of kinsmen.[69] According to Nārada the King should give his approval to their rules and laws.[70] The *Smṛtikāras* have made mention of those communities and associations whose members were not the Aryans but their importance in society was recognised because on their labour and skill rested the whole edifice of society.

Though these secular laws developed side by side with the sacred law, it would be safe to say that both were interrelated and helped towards the development of Hindu law as a whole. N.C. Sengupta has justly remarked that there was a mutual reaction between these two sets of laws and the inferior types of marriages recognised in the *Smṛtis* were the customs followed by the less advanced communities.[71] In the same way the sacred law influenced the customary law because there are many resemblances between these two sets of laws developing in a simultaneous manner.

The King was also the source of law. Though the *Dharmasūtras* left no room for King as the originator of law and defined his position as a mere executive sovereign enforcing the law as determined by the Sacred Texts and accepted customs,[72] the transition from this period to the *Arthaśāstra* period represented a marked change. Kauṭilya recognised the King as the originator of law. He stated that *Dharma*, *Vyavahāra*, *Caritra* and *Rājaśāsana* were the four feet of law and in a conflict between the *Rājaśāsana* and three other sources the *Rājaśāsana* or the royal edicts would prevail.[73] Kauṭilya

accepted King as the juridical source of law. It was not a mere theory. The Maurya Kings exercised their legislative powers in reality. Some edicts of King Aśoka were laws. Hiuen-tsang illustrated a story of King Bimbisara that in order to prevent outbreak of fire which became very common during his time, King Bimbisara passed a law to the effect that any person in whose house fire would break out would be punished. One day it broke out in the royal palace and Bimbisara was ready to banish himself for breach of rules.[74]

Manu, whom Bühler placed in the period between the second century B.C. to the second century A.D. also invests the King with legislative functions.[75] Medhātithi interprets that subjects and officers should obey whatever *Dharma* the King imposed by proclamation. Thus, Manu has recognised the law-making function of the King though he states elsewhere that *Dharma* is the son and creation of the Almighty.[76] Jayaswal explains two contradictory verses by stating that the King could not make new laws.[77] But Medhātithi's interpretation negates this version. Medhātithi adds that laws of the Kings should be unopposed to the *Śāstras* as well as customs and further, they are to relate to material or secular matters only. So the two contradictory verses can be reconciled thus—Sacred laws have divine origin while the King has power to legislate residuary material laws.

In the writings of Yājñavalkya the legislative power of a King has found recognition. But he maintains that without detriment to one's own *Dharma* (*Nijadharma*) whatever customary law there may be, should also be carefully observed as also the duties imposed by the King.[78] Vijñāneśvara explains *nijadharmāvirodhenaiva yastu Sāmayiko dharmaḥ* as such customary rules only as are not inconsistent with one's own *Dharma* e.g. "meals should be provided for all travellers" or the rule that "the horses and the like shall not be carried to the dominions of enemy".[79] Yājñavalkya thus gives royal edicts a secondary authority to what he terms "*nijadharma*" (one's own *Dharma*).[80] The same idea has found expression in Bṛhaspati who states that without detriment to established rules whatever royal command has been issued, that itself must be followed "under the King's orders".

All these reveal that King's legislative powers were to some extent limited and he had no authority to create new rules in the field of sacred law. The *Śukranīti* points out that royal ordinances mainly exhorted the subjects to respect elders, to preserve concord in family, to combat boundary disputes and other disputes, to check the use of false weights and measures, and fabrication of documents, to prevent from making false accusations, to fight against misappropriation of property, giving asylum to thieves and criminals, offering false evidence and above all these royal edicts were in the form of rules and warnings for proper discharge of duties of government officials and subjects.[81]

Nārada, however, declares that the King has the legislative power and royal edict overrides the other.[82] He further adds that a person who does not obey the rules enjoined by the King should immediately be punished for the offence of showing contempt to royal decrees.[83] Nārada also asserts that the law personified as a King roams on earth visibly with a thousand eyes. Mortals cannot live at all if they transgress his commandments.[84] Bṛhaspati also thinks that royal edict has power to overrule everything.[85] Śukra remarks that royal ordinances should be pasted in public places for general information.[86] It was thus not unusual for a king to issue ordinances. According to Medhātithi a King might prohibit by law the export of food-stuffs from his kingdom during the time of famine.[87] In the reign of King Avantivarman, killing of living beings was prohibited in Kashmir for ten years by a royal edict.[88] It is, however, to be noted that laws made by the King were essentially mundane and they served as laws in the realm of administration of justice.

Thus, it is clear that though the *Dharmasūtras* failed to recognise the legislative power of the King, some powers, however, were invested for making laws from about the third century B.C. As the *Samitis* or popular assemblies became obsolete, Kings began to exercise this power in consultation with their ministers and other advisers. In this way, therefore, royal edicts could introduce some reforms or changes in the body of law.

Though *Śruti* (Revealed Texts), *Smṛti* (Recollections),

Sadācāra (Good customs) and *Rājaśāsana* (Royal edicts) were the basic sources of law, the Hindus of ancient India recognised some other sources as authoritative.

Ātmanastuṣṭiḥ-Svasya priyam or self-satisfaction is one of such accessories. Both Manu[89] and Yājñavalkya[90] made specific mention of this source as valid. Medhātithi interprets the term *Ātmanastuṣṭiḥ* as self-satisfaction of those who are "learned in the Veda and Good" (*Vedavidam Sādhunām*). When the "learned and good" felt satisfied about the righteousness of any action that action was to be recognised as justified because men of these qualities would never feel satisfied with the actions which were wrong. Kulluka, however, cites Garga and remarks that the self-satisfaction means that in cases of optional alternatives, that alternative should be adopted in regard to which one's own mind feels satisfied.[91] Vijñāneśvara also echoes the same idea that self-satisfaction determines which one of several sanctioned alternatives had to be followed.[92] *Viramitrodaya* while explaining the verse of Yājñavalkya[93] cites Bṛhaspati who declared about expiation of a sin "one should go on doing an act until his mind becomes lightened" i.e. until his conscience is cleared up.

Reason is also considered as a secondary source of law. Nārada declared that when it was impossible to act up to the precepts of sacred law, a method founded on reasoning was to be adopted.[94] It thus appears that in a conflict of various *Śāstras*, application of reason was sanctioned for reaching to a definite decision. Yājñavalkya made mention of *Samyak Saṅkalpajaḥ Kāmaḥ* which is the desire born of deliberation and it is equivalent to reason.[95] Vijñāneśvara interprets *Samyak Saṅkalpajaḥ Kāmaḥ* as the desire born of deliberation e.g. I shall not drink water before finishing meal.[96] Thus rational method for determining the principles of law was recognised by the *Dharmaśāstra* authors. Reason was frequently applied by the commentators and *Nibandhakāras* or the authors of Law Digests for elaboration of the law. Though it was not possible to override the texts of law, it could be reasonably interpreted. Thus, by application of the mode of reason laws could be expanded or curtailed. So reason played a decisive role in the development and evolution of law.

The domain of law was also affected by *Mīmāṁsā*. The word *Mīmāṁsā* according to Monier Williams is profound thought or reflection or consideration, investigation, examination or discussion. *Mīmāṁsā* is the exegetic philosophy of the Hindus and Vijñāneśvara has interpreted it as *Vedavākya vicāra* (critical treatise of the Veda)[97] and the name of Jaimini is associated with it because he is the pioneer expounder of this philosophy.

Writers of *Dharmasūtras*[98] have referred to *Mīmāṁsā* rules which originated from the need of interpretation of the *Vedas* and the *Brāhmaṇas*. It has been justly remarked that "there were differences between Mīmāṁsists with reference to interpretation of the Vedas and Jaimini's work was merely an attempt to systematise their teachings".[99]

The authority of *Mīmāṁsā* as the valid source of Hindu law had no sacred character like the Revealed texts and the Recollections. Its validity lay in the fact that it aimed at interpreting the *Śruti* by application of reason. While interpreting the *Vedas* thus, Mīmāṁsists added new rules and thereby supplemented them. Therefore, in the work of Yājñavalkya, *Mīmāṁsā* was considered as authoritative.[100] The authority of *Mīmāṁsā* was also recognised by the commentators and authors of Law Digests. Vijñāneśvara, Kulluka, Viśvarupa, Mādhavācārya, Dhāreśvara and others unanimously held that exegesis or interpretation of *Mīmāṁsā* was more powerful authority in comparison to *Smṛti* texts.

There were also other auxiliary sources of law. Yājñavalkya has mentioned the *Nyāya* and the *Aṁgas* along with other sources of law.[101] In order to complete the study of the *Vedas* these had to be scrutinised. Vijñāneśvara interpreted *Nyāya* as *Tarkaśāstra* or logic and *Aṁgas* as six subsidiary sciences like grammar, rituals, phonetics, etymology, prosody and astronomy.[102] Gautama[103] and Kauṭilya[104] were also aware of these authorities. *Mīmāṁsā* apart, they were also sciences of reasoning and the *Śruti* or the *Vedas* had to be interpreted by the application of principles of *Nyāya* and the *Aṁgas*.

The importance of the *Purāṇas* and the *Itihāsas* as the source of law has been recognised from a very early period. According to Gautama, the *Smṛti*, *Aṁgas*, Sayings of learned

men, *Itihāsa* and the *Purāṇas* were the sources of law.[105] Āpastamba also frequently mentioned the *Purāṇas* as authority.[106] The *Purāṇa* has been defined as that which has five characteristic features in their accounts of Creation, Dissolution, Genealogy, Age cycles and History of dynasties. The *Viṣṇu Purāṇa* named eighteen *Purāṇas* viz. *Brahma, Padma, Viṣṇu, Śiva, Bhāgavata, Nāradīya, Mārkaṇḍeya, Agni, Bhaviṣya, Brahmavaivarta, Liñga, Varāha, Skanda, Vāmana, Kūrma, Matsya, Garuḍa* and *Brahmāṇḍa*. The *Brahmavaivarta*, however, mentions the *Vāyupurāṇa* instead of *Brahmāṇḍa*. In addition to these eighteen *Purāṇas* there are also eighteen *Upapurāṇas* or minor *Purāṇas* viz. *Kūrma, Sanatkumāra, Narasiṁha, Nanda, Śivadharma, Nāradīya, Durvāsas, Kapila, Mānava, Uśanas, Brahmāṇḍa, Varuṇa, Kālikā, Maheśvara, Śamba, Saura, Parāśara, Marīca* and *Bhārgava*. Though all the *Purāṇas* were not the composition of the same period, and the *Purāṇas* in their present form are compilations of a much later period as has been held by some scholars, yet several *Purāṇas* undoubtedly were of very ancient origin and they were often quoted as authority. The *Smṛticandrikā* made mention of the *Purāṇas* along with the other limbs of Vedic studies and the jurists often cited *Purāṇas* to deduce conclusions.[107]

Equally significant role was played by *Itihāsa* or the two Epics of India namely the *Rāmāyaṇa* and the *Mahābhārata* and the tendency to derive authoritative precedent from them were not unusual.[108]

Though different sources of law together form the body of Hindu law, the writers of *Dharmasūtra, Śāstra*, Commentaries and Digests have unanimously declared that the *Veda* or the *Śruti* is the highest authority. Vyāsa thinks that the *Veda* is the only pure source of knowledge and Aparārka comments on Yājñavalkya that by "pure" is meant one whose authority is beyond doubt and all the other sources are "mixed" therefore, their authority is open to doubt.[109] Aparārka thinks that what is declared in the *Purāṇas* and other sources is of lesser authority.

Though the *Veda* was considered as the highest authority, some of the Vedic texts suffer from contradiction. According to Manu, in such cases both are to be treated as authoritative

and optional alternatives.[110] *Viramitrodaya* adds that between two Vedic texts which is more clear is to be accepted.[111] Where there is a conflict between *Śruti* and *Smṛti* the former is to be accepted.[112] In the same manner when there is a conflict between custom and *Smṛti* the former is to be rejected.[113] Among custom and self-satisfaction and well considered deliberation the preceding is more authoritative than the following.[114] *Viramitrodaya* also holds that in cases of conflict between the *Veda* and the *Purāṇa* the former is authoritative.[115]

The difference of law according to Parāśara was due to the changed situation because law or the Right was one in the *Kṛta* cycle, different in the *Tretā* cycle, yet different in *Dvāpara* cycle and more so in the *Kali* cycle as it varied with the change of time cycle.[116] He further added that in the *Kṛta* austerity was considered as the highest duty or *Dharma* while in the *Tretā* learning took the foremost position. Finally in the *Dvāpara* and *Kali* the sacrifice and charity took foremost positions respectively.[117] It thus appears that though the essence of law remained unchanged its application and interpretation had to adjust with the cycle of time and changed social environs.

Footnotes

1. *Dhṛyate lokohanena iti dharma.*
2. M.M. Williams, *A Sanskrit English Dictionary*, Oxford 1956, p. 510.
3. *R.V.*, V. 63. 7.
4. Ibid., I. 68. 2, I. 105. 12, I. 136. 2, I. 142. 7, I. 164. 11, II. 28. 4, IV. 23. 8-10, X. 190. 1.
5. Ibid., V. 63. 1.
6. *Śata.*, V. 3. 3. 9. *S.B E.* 41.
7. Ibid., V. 4. 4. 5.
8. *Bṛhad Up.* I. 4. 14. *S.B.E.* 15—*Sa naiva Vybhattacchreyo repamatyasrjata dharmam tadetatkṣatrasya kṣatram yaddharmastasmaddharmātaparam nāsti. Atho abalīyanbalīyaṁ śamāśaṁsate dharmeṇa yathā rājñā. Evam yo vai sa dharmaḥ satyam vai tat tasmātsatyam vadantamāhurdharmam vadatīti dharmam vā vadantam satyam vadatītyaitaddhyai vaitadhubhayam bhavati.*
9. A.K. Sen, *Studies in Hindu Political Thought*, Calcutta 1926, p. 111.
10. *Āpas.*, I. 1.1.3. *S.B.E.* 111.

11. *Gaut.*, I. 1. *S.B E.* 11.
12. *Vaś.*, I. 4. *S.B.E.* 14.
13. *Baudh.*, I. 1.1.1. *S.B.E.* 14.
14. *Manu*, VII. 14.
15. Ibid., II. 6. *Vedokhiladharma-mūlam.*
16. *Yāj.*, I. 7.
17. *Manu*, II. 6.
18. *Sm. Can.*, p. 3.
19. *Tantra*, p. 105.
20. *Mīm. Sū.*, I. 1.2.
21. *Baudh.*, I. 1. 1-6.
22. *Parā.*, I. 20.
23. *Āpas.*, I. 1. 2-3.
24. Ibid., I. 4-6.
25. Ibid., I. 1. 1-2.
26. *Manu.*, II. 6.
27. Ibid., II. 6.
28. Ibid., II. 6.
29. Ibid., II. 6.
30. *Baudh* , I. 1.1. 1-5 for definition of a *Śiṣṭa.*
31. *Gaut*, XXVIII. 49, *Vaś.*, III. 20, *Baudh*, I. 1. 7-9, *Yāj.*, I. 9.
32. *Āpas.*, I. 1. 2-3.
33. *Yāj.*, I. 7.
34. Ibid., I. 7.
35. Ibid , I. 7.
36. *Sm. Can.*, p. 1.
37. *Tantra.*, p. 105.
38. Ibid , p. 107. *Vikalpa eva hi nyāyyastulyakakṣapramāṇataḥ.*
39. *Manu*, X. 81, 98, 102, 118, 121.
40. *Gaut.*, XI, 19. 20.
41. *Āpas* , I. I. 20, 7-8.
42. *Vaś.*, I. 4-5, *Upadiṣṭo dharmaḥ prativedam. Smārtto dvitīyaḥ, tṛtīyaḥ śiṣṭāgamaḥ.*

42a. *Baudh.*, I. 1.1. 2-4, *Vedasmṛti vihita dharmaḥ tadalābhe śiṣṭācāra pramāṇam.*

43. *Manu*, I, 118. 11. 6-18, VIII. 3-41.
44. *Yāj.*, I. 7.
45. *Vaś.*, I. 7. *Śrutyābhāve, Gaut.*, X. 20. *āsnāyairaviruddhā.*
46. *Manu.*, II. 6.
47. *Yāj.*, I. 7.
48. *Vaś.*, I. 6.
49. *Baudh* , I. 1. 5.
50. *Nār.*, I. 40.
51. *Manu.*, II. 17.
52. *Yāj.*, I. 2.
53. *Vaś.*, I. 20.
54. *Nār.*, I. 40, *Dharmaśāstra Virodhe to Yuktiyukto Vidhhiḥ Smṛtaḥ | Vyavaharo hi Balaban dharma–stenābhīyate.*
55. *S.B.E.*, 33, p. 15 f.n.
56. *Bṛhas.*, II. 28.
57. Ibid , II. 29-30.
58. Ibid., II. 31.
59. *Manu* , VIII. 41. *Jātijānapadāndharmān Śreṇīdharmāṅgśca dharmavita. Samikṣya Kuladharmāśca Svadharmam partipādayet.*
60. *Baudh.*, I. 1. 2. 14, *Āpas.*, I. 21. 6, II. 17. 20, *Vaś.*, XX. 16, *Manu.*, X. 51.
61. *Manu.*, VIII. 3.
62. *Yāj.*, I. 342-43. *Sa eva nṛpaterdharmaḥ Svarāṣṭre paripālane | tameva Kṛtsnamāpnoti pararāṣṭram basam nayet || Yasmin deśe yadācāra vyavahāra Kulasthitiḥ | tathaiva pratipālyohasau yadā basamupāgataḥ ||*
63. *Viṣ.*, II. 42. *Paradeśavāptau taddeśadharmān nocchindyāt.*
64. *Manu.*, I. 118.
65. Ibid., VIII. 219.
66. *Yāj* , II, 192. *Śreṇinaigamapākhaṇḍigaṇānāmapyayam vidhiḥ | Bhedancaiṣām nṛpo rakṣet pūrvavṛttinca pālayet.*
67. *Nār.*, X. 1-3.
68. *S.B.E.*, 33, pp. 153-154 f.n.
69. Ibid., 33, pp. 153-54.
70. *Nār.*, X. 3.
71. N.C. Sengupta, *Sources of Law and Society in Ancient India,*

Calcutta 1914, p. 197.
72. *Vaś.*, XIX. 4. *Deśājātikula-dharman Sarvānevaitānanupraviśya rāja caturo Varṇāsvadharma pratiṣṭhāpayen.*
73. *A.S.*, III. 1.
74. Beal, II, pp. 165-66.
75. *Manu.*, VIII. 13. *tasmāddharmam yamiṣṭeṣu sa vyavasennarādhipaḥ | aniṣṭam Cāpyaniṣṭeṣu tam dharmam na vicālayet ||*
76. Ibid., VII. 14.
77. K.P. Jayaswal, *Hindu Polity*, Calcutta 1924, part II, p. 152.
78. *Yāj.*, II. 186. *nijadharmāvirodhena yastu sāmayiko bhavate | Sohapi yatnena Samrakṣyo dharmam rājakṛtaśca yaḥ ||*
79. Ibid., II. 186.
80. *Yāj.*, quoted in *Śūlapāṇi.*
81. *Śukra*, I. 292-311.
82 *Nār.*, I. 10.
83. Ibid., Parikīrnaka 13, *rājñā pravartitāndharmānyo naro nānupālayet | Daṇḍyaḥ sa pāpo vadhyaśca lopayanrāja-śāsanam ||*
84. Ibid., 20.
85. *Bṛhas.*, II. 27.
86. *Śukra.*, I. 131. *likhitvā Śāsanam rājā dhārayitā catuṣpathe. iti prabodhayannityam prajāśāsana dimdimaiḥ.*
87. *Manu* , VIII. 399.
88. *R.T.*, V. 64.
89. *Manu.*, II. 3.
90. *Yāj.*, I. 6.
91. On *Manu* II. 3. *Vaikalpine ātmastuti pramāṇam.*
92. On *Yāj.*, I. 7.
93. *Yāj.*, I. 7.
94. *Nār.*, I. 40. *Dharmaśāstra virodhetu yuktiyuktovidhiḥ Smṛtaḥ.*
95. *Yāj.*, I. 7.
96. *Samyak Saṅkalpajjātaḥ Śāstraviruddhaḥ Kāmaḥ Yathā mayā bhojana Vytiroekenodakam na pātavyamiti.*
97. On *Yāj.*, I.3.
98. *Āpas.*, II. 8. 3, *Baudh.*, I. 1. 8, *Vaś.* III. 20.
99. N.C. Sengupta, Op. Cit. p. 85.
100. *Yāj.*, I. 3.
101. Ibid., I. 3. *Purāṇanyāya mīmāṁsādharma-śāstraṅgamiśritā. Vedasthānāni Vidyānām dharmasya ca caturdaśaḥ.*
102. Ibid., I. 3.
103. *Gaut.*, VIII. 4-6.
104. *A.S.*, I. 1.
105. *Gaut.*, VIII, 4-6. *Vedavedāṅgavidvākyyetihāsa-pūrāṇakuśalaḥ.*
106. *Āpas.*
107. *Sm. Can.*, p. 5.
108. N.C. Sengupta, Op. Cit. p. 90. Cites an example given by Nanda Pandita to establish the validity of the adopted daughters on the authority of precedents from the *Rāmāyaṇa* and the *Mahābhārata.*
109. *Aparārka* on *Yāj.*, I. 7.
110. *Manu*, II. 14.
111. *Viram.*, pp. 25-29.
112. *Sm. Can.*, pp. 13-17.
113. *Viram.*, pp. 25-29.
114. *Mitākṣarā* On *Yāj.*, I. 7. *eteṣām virodhe pūrva pūrvasya valiyastvam.*
115. *Viram.*, pp. 25-29.
116. *Parā.*, I. 22.
117. Ibid., I. 23.

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